Special Victims’ Counsel: Representing Sexual Assault Victims

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WHAT DO YOU WANT, WHEELER?
I' D LIKE TO REPORT A CRIME, COLONEL.

AS REQUIRED, I AM REPORTING IT THROUGH MY CHAIN OF COMMAND.

WHAT'S THE CRIME?
I WAS RAPED BY A SUPERIOR OFFICER.

WHO'S THE ALLEGED PERPETRATOR?
YOU, SIR, AS YOU KNOW.
Origin: Public Perceptions
Origin: Public Perceptions

Air Force instructor convicted of rape, sexual assault in military sex scandal

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Adversarial Justice System
Adversarial Justice System
The Response
A New Paradigm
SVCs Advise, Empower, Advocate

- Reporting
- Investigation/attending interviews
- Specialized Legal Assistance
- Expedited and Humanitarian Transfers
- Nonrated Periods for Performance Reports
- Article 32 Hearings
- Victim input
- Courts-Martial
- Appellate Representation
- Parole & Clemency
Where are AF SVCs?
AF SVC Program Snapshot

**Workload**
- Clients: ~1100
  - ~24 per SVC
  - 922 new in CY18
  - 80 child clients

**Client Profile**
- ~47% E-4 & Below
- ~85% female
- ~5% children (<18 y/o)
- ~72% referred by SAPRO

**Eligibility Categories**
- Active Duty, Reserve, & Air National Guard
- USAFA Cadets
- DoD Civilians*, Dependents*, & Retirees*
  (*If accused is subject to the UCMJ)
SVC Program Further Expansion?

- NDAA FY19
  - New UCMJ Art 128b, Domestic Violence (DV)
  - Requirement to study SVC expansion to include DV
AF SVC – Rep of Child Clients
Types of Child Assistance

• Guardian Ad Litems
• Child Representative
• Child’s Attorney
Attorney/Client Relationship

• **Who is the client?**
  
  – Ethical obligation is to the child
  – Child is the client, makes the decisions with SVC consultation

• **SVCs represent legal, stated interests of their client**
  
  – Presumption: Child is competent, has same role in the attorney-client relationship as an adult client
  – Lack of competency to sign the Scope of Representation DOES NOT mean a child cannot understand and make decisions
Example of Language Limits

Atty: Tell me about what you did at school today?

4 yr old: I learned about the letter Z and...hold on, Batman is calling. Hi Batman...ok, go get Flash...we need to get him.

4 yr old: Batman said we can’t have broccoli tonight. And he is the leader of my team so I listen to him.

Atty: What’s your team?

4 yr old: Me, Lightning McQueen, and Batman.
Child Rep – Things to Remember

• Parents
  – Divorces & custody battles
  – Offender-supporting parents
  – Overprotective parents

• Communication
  – Parental Involvement
  – Facetime
  – Ensuring privacy

• Testimonial Accommodations

• Trauma can lead to developmental regressions

• Narrative Event Practice (NEP)

• Ask for expert assistance
Case Study 1
Multi-Victim
Case Study 1
Multi-Victim

• Initial meeting
  – Competency
  – Input

• Issues in Investigation
  – Cell phone
  – Interviews

• Jurisdiction

• Trial
  – Escort Travel
  – Plea Negotiations
  – Impact Statement
Case Study 1
Multi-Victim
Case Study 2
Substituted Judgment

- Paralegal: How was school today?
- 7 yr old: I want to kill that bird and drink its blood. *(Ten minutes later after explaining scope of rep)*
- Paralegal: Who is Ms. Ashley?
- 7 yr old: My lawyer
- Paralegal: What does she do?
- 7 yr old: Fights for me
Case Study 2
Substituted Judgment

• Attempt to determine what the child would decide if child was able to make considerate decision
  ~ Not best interests
• Must maintain normal attorney-client relationship as much as possible
• Should use objective facts to make the determination
Conclusion

“The feedback from the victims who have used [Special Victims’ Counsel] is exceptional so far...I think that’s one program that is one of those potential game changers.”

General Mark A. Welsh III, Former Air Force Chief of Staff