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Lawful Command Emphasis

COL Scott Arnold
USAREUR Judge Advocate

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Unlawful Command Influence

- What is UCI?
 - Any action taken in an attempt to influence either an outcome or actor into an inappropriate action.
 - The improper use, or perception of use, of superior authority to interfere with the military justice process.
 - Article 37 UCMJ Unlawfully Influencing Action of Court.
- Actual UCI?
 - Genuine manipulation of any given proceeding or decision-making.
 - “You will find her guilty.” “You will prefer court-martial charges.”
- Appearance of Impropriety?
 - Where an objective, disinterested observer, fully informed of all the facts and circumstances, would harbor a significant doubt about the fairness of the proceeding.
- Central Tenants of Military Justice
 - Commanders at every level must be free to act with independent discretion
 - The accused must be free to build his case w/o outside influence/interference
 - Court-martial members must be free to decide the case on the merits based on the evidence presented, law as instructed by the Military Judge, and arguments of counsel

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Lawful Command Emphasis

- What is Lawful Command Emphasis?
 - Commander-SJA approach to ensure discipline and offender accountability concurrently with fair hearings and an accused's opportunity to present his case.

Balance the Commander's Message with the Soldiers' Rights.

- Talk Offense, Not Offender
 - e.g., "Sexual assault is a criminal offense that has no place in the Army."

VS.

- "Zero tolerance in my command -- anyone guilty of sexual assault should receive the severest punishment"
- Talk Process, Not Results
 - "Commanders must exercise independent discretion"

VS.

- "I expect a Special Court Martial to be convened."

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Special Victims' Counsel

CPT Rufus C. Allen

Client Services

Wiesbaden Legal Center

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Special Victims' Counsel

- Provides legal assistance to victims of sexual assault
- Located in the Legal Assistance Office
 - Neither prosecution nor defense counsel
- Available to anyone otherwise eligible for legal assistance upon filing a restricted or unrestricted report of sexual assault

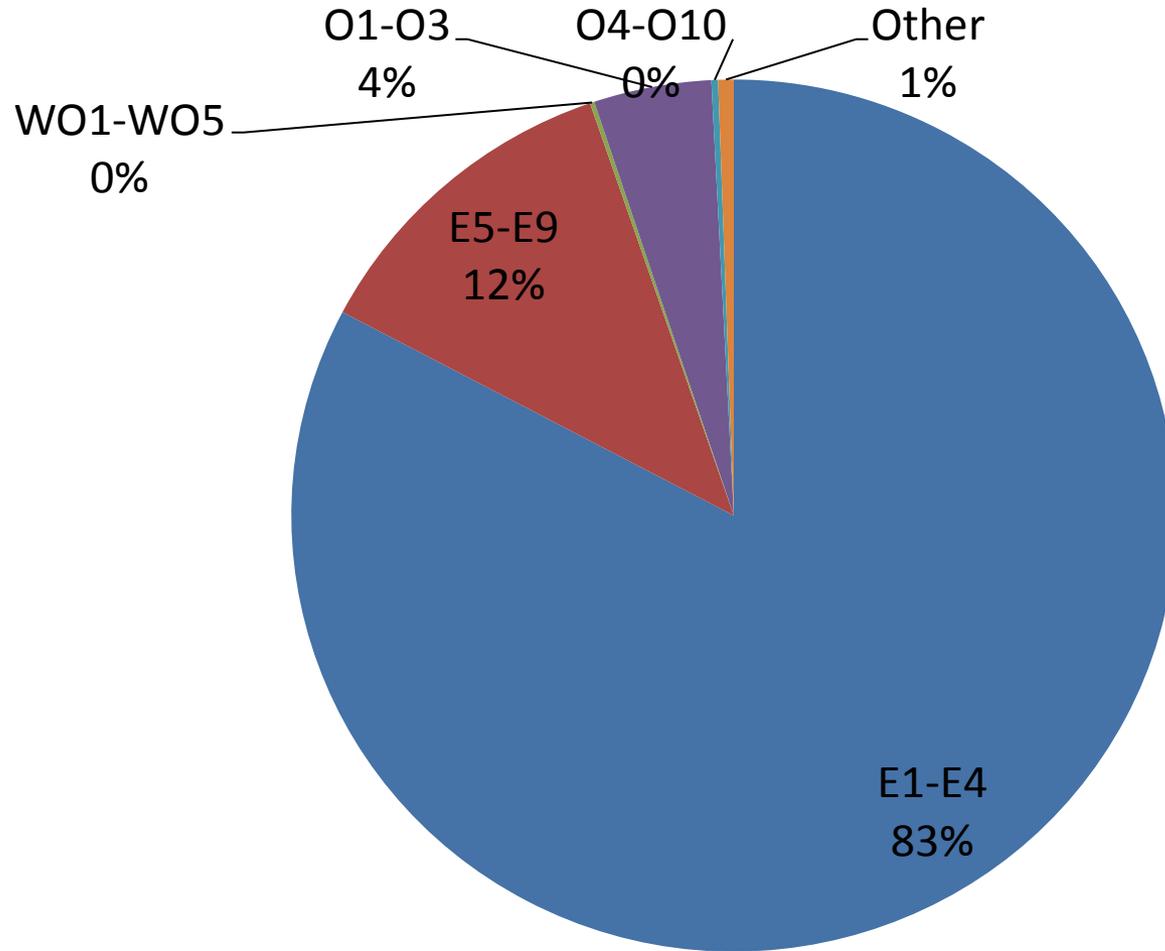
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Unrestricted Reports



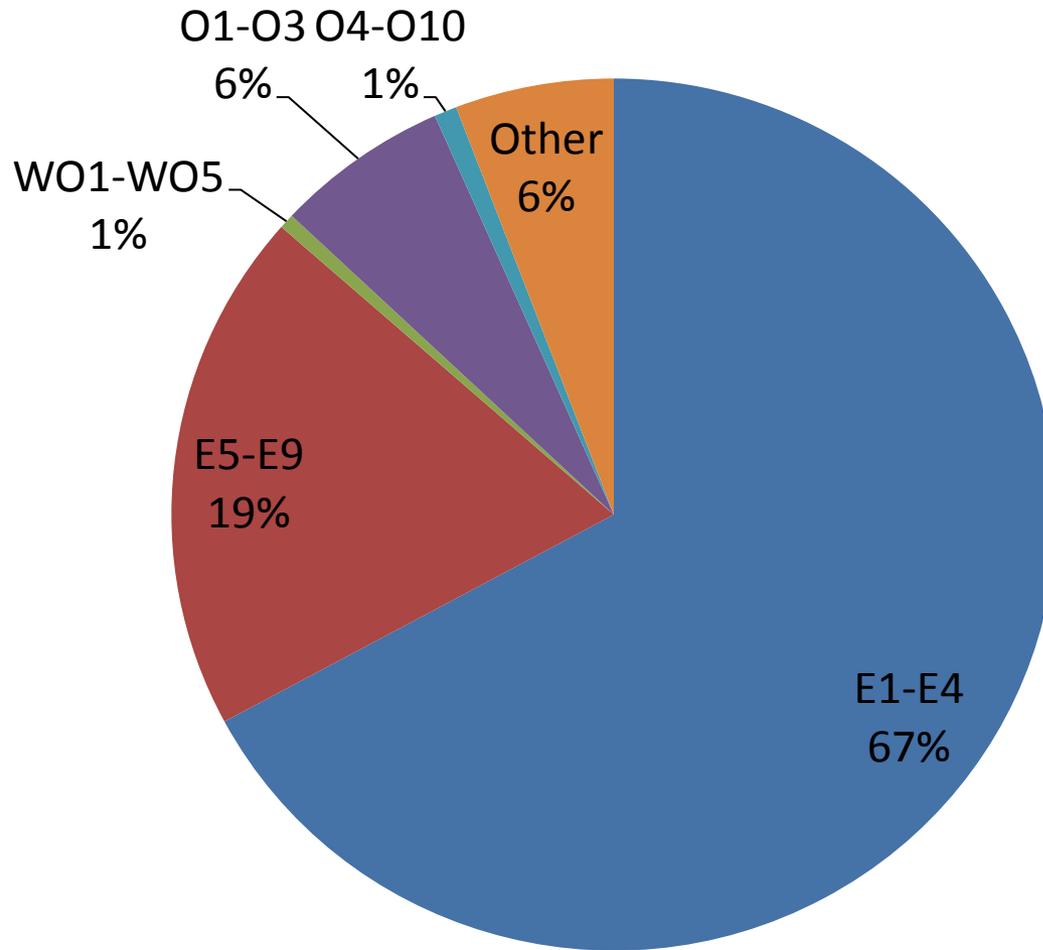
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Restricted Reports



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History of the SVC Program

- 17 Oct 11: USD Memo “Legal Assistance for Victims of Crimes”
- 14 Aug 13: SECDEF Publishes DoD Guidance for Sexual Assault Prevention and Response, including a **“special victim’s advocacy program best suited for that Service”**
- 01 Nov 13: DA institutes SVC program
- 24 Jun 14: 2014 NDAA mandates SVC program for all Services

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2014 NDAA

- Establishes “Special Victims’ Counsel for victims of sex-related offenses”
- Incorporates Crime Victims’ Rights Act into Military Justice
- Creates program for prevention of retaliation against victims
- Sense of Congress
 - *... victim can report criminal activity, including sexual assault, without fear of retaliation, including ostracism and group pressure from other members of the command.*

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Crime Victims' Rights Act

- 8 Victims' Rights
 - 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 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 the proceeding;
 - The right to be reasonably heard at any public proceeding in the district court involving release, plea, [or] 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; and
 - The right to be treated with fairness and with respect for the victim's dignity and privacy.
- Rights added by 2014 NDAA in RED

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Military Justice Role of the SVC

- Advises victims of sexual assault at all stages of the Military Justice process
 - Investigation
 - Preferral/Referral/Negotiations
 - Article 32
 - Court Martial
 - Post Trial

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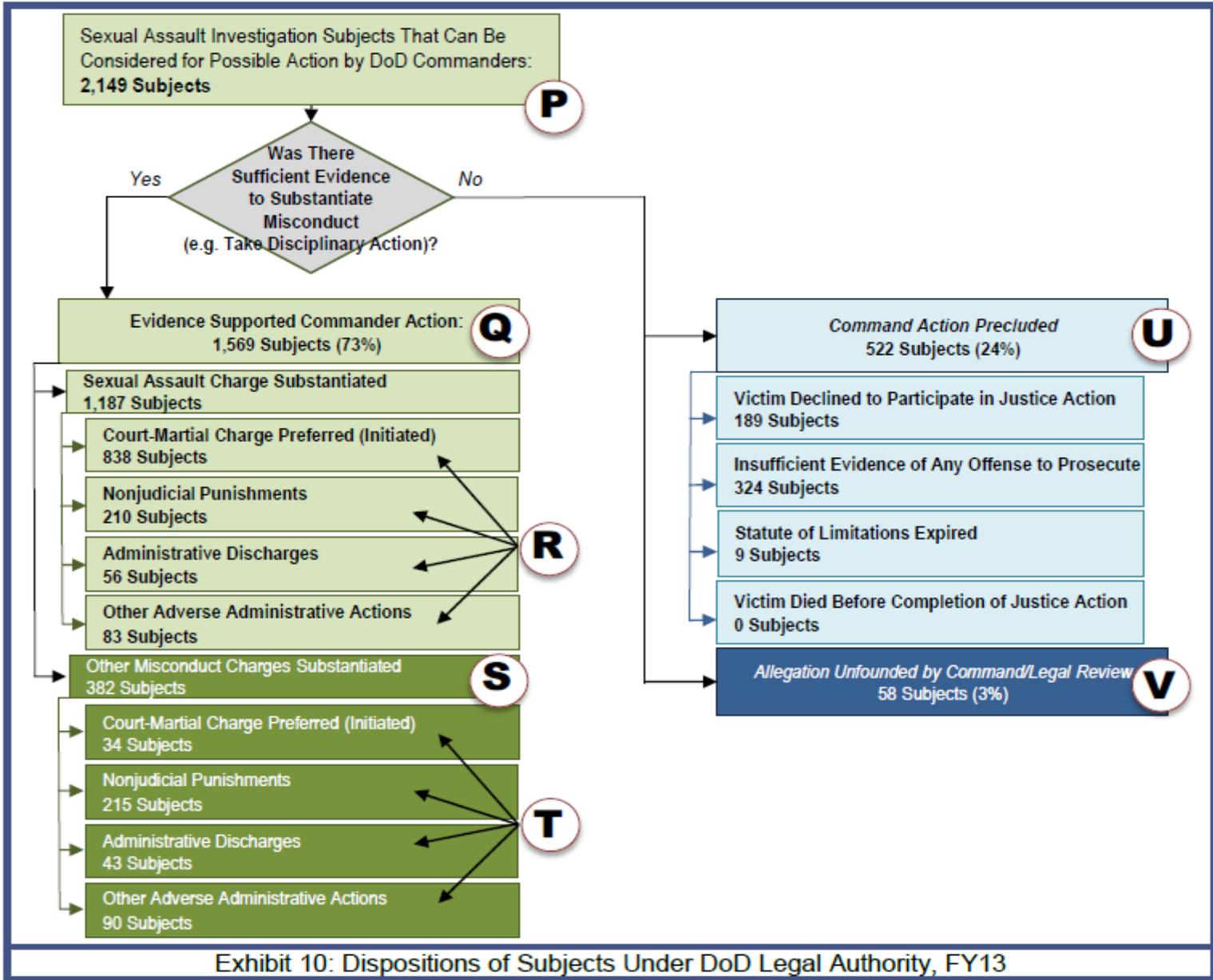


Exhibit 10: Dispositions of Subjects Under DoD Legal Authority, FY13



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Non-MJ Role of the SVC

- Advises victims in the following non MJ areas:
 - Potential collateral misconduct
 - Victim witness assistance program
 - SARC and VA services
 - 3rd Party liability
 - Emotional and mental health services
 - Other military administrative proceedings
 - Traditional legal assistance areas

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Table 5: Expedited Transfers and Denials for both FY12 and FY13

Transfer Type	FY12	FY13
Number of victims requesting a change in Unit/Duty Assignment (Cross-Installation Transfers)	57	99
Number Denied	2	3
Number of victims requesting a change in Installation (Permanent Change of Station)	161	480
Number Denied	0	11
Total Approved	216	565

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Why the SVC?

- Confidentiality
 - Attorney-Client Privilege
- Independence
 - Not Trial Counsel, and not Trial Defense
- Additional Services
 - 75% of victims' legal needs are traditional legal assistance issues

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VWL & SVC Overlap

VWL

SVC

- Primary POC through which victims obtain info/assistance in securing victim services at earliest opportunity.

- Acts ICW unit VA responsible for crisis intervention, referral, and ongoing nonclinical support to SA victim.

- Inform and assist with transportation, parking, childcare, lodging, and translators/interpreters.

- Inform of entitlement to reimbursement for expenses of appearing at Art. 32 or court-martial.

- Assist with obtaining payment of witness fees and related costs.

- Provides assistance to non "special victims"

- 1. Inform on reporting options**
- 2. Inform on victim rights**
- 3. Inform on military and VA benefits**
- 4. Inform on expedited transfer requests**
- 5. Inform on MPO and civilian protective orders**
- 6. Inform on the MJ System and victim's rights/duties**

7. Advise victim in collateral civil issues arising from crime
8. Advocate victim's interests with TC on disposition options
9. Referral to TDS, as necessary
10. Advise victim on victim impact statement
11. Accompany victim to all pre-trial interviews, hearings and court-martial proceedings
12. Discovery motions regarding medical records
13. Motions/court appearances/appeals on MRE 412 and 513 issues
14. Assist victim in post-trial submissions
15. Traditional Legal Assistance

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Article 120, Abusive Sexual Contact

MAJ Jeff Dietz

Deputy, Military and Civil Law

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Abusive Sexual Contact

- **BLUF:** If a Soldier touches any body part of another person (even if the touching is through clothing), and it was without the person's consent and done to arouse or gratify anyone's sexual desire, then the Soldier has committed the offense of abusive sexual contact, in violation of Article 120, UCMJ.
- Elements: That the accused caused **Sexual Contact**; by causing bodily harm to the victim; and the accused did so without the consent of the victim.
- "Sexual Contact" includes any touching, either directly or through the clothing, **of any body part of any person, if done with an intent to arouse or gratify the sexual desire of any person.**
- "Bodily Harm" means any offensive touching of another, however slight, including any nonconsensual sexual act or nonconsensual sexual contact.
- A current or previous dating or social or sexual relationship by itself, or the manner of dress of the person involved, shall **not** constitute consent.
- Example: A Soldier in a bar, walks up behind a stranger, and caresses the stranger's back while only touching the stranger's sweater. If the Soldier made the caress to arouse the sexual desire of the stranger, and the stranger did not consent to the touch, then the Soldier has committed abusive sexual contact.

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