



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

DAJA-ZA

18 JUL 2019

MEMORANDUM FOR JUDGE ADVOCATE LEGAL SERVICES PERSONNEL

SUBJECT: Military Justice Redesign – **POLICY MEMORANDUM 19-01**

1. For over 18 months, The Judge Advocate General's Corps (JAGC) has tested the viability of redesigning how commanders administer Military Justice within our expeditionary Army. Those efforts have revealed three guiding principles:

a. First, the development of expertise in criminal litigation and expertise advising commanders is the driving principle behind this redesign effort. Versatility of experience better both, but each role is distinct from the other.

b. Second, unity of effort ensures that the JAGC properly allocates resources to both special-victim and general-crimes cases and builds expertise in both and in command advice. The Army must develop and maintain an institutional capability to prosecute all types of cases and to do so effectively in an austere environment.

c. Third, unity of supervision ensures authority over, and accountability for, the practice of military justice. Unless impracticable, a single technical supervisor should direct both counsel litigating special-victim and general-crimes cases.

2. All staff judge advocates (SJA) will apply the military justice redesign. The enclosed business rules address the purpose, justification, principles, models, and naming conventions for the redesign.

3. No later than 1 October 2019, each SJA who does not already have an approved redesign plan will submit a plan to execute or seek an exception to this policy memorandum to the Assistant Judge Advocate General for Military Law and Operations (MLO).

a. The MLO is delegated the authority to approve any plan that is consistent with the enclosed business rules or any exception to this policy, which will be determined on a case-by-case basis.

b. As an initial requirement of any redesign plan, an SJA will ensure that he or she sufficiently resources the local Trial Defense Service office "to your detriment." All SJAs will include a discussion of this requirement in their redesign plans.

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c. An SJA that is already participating in the military justice redesign pilot program will ensure that the SJA's procedures, processes, and duty titles conform to the guidance in this memorandum and the enclosed business rules.

d. If an SJA determines, in the judgment of the SJA, that an approved plan must be revised significantly in light of a changed circumstance, the SJA will submit a proposal to implement that change to the MLO for approval. Consistency across the Army is important, and an SJA must exercise vigilance to ensure that the SJA's military justice operations reflect the approved plan.

4. To capture lessons learned as the redesign is fully implemented, an SJA will comply with periodic reporting requirements as prescribed by the Office of The Judge Advocate General.

5. This redesign is one part of our ongoing effort to ensure that the best Army in the world receives the best legal advice and litigation support possible from the best team of legal professionals anywhere. Thank you what you do every day in every part of the world in which we serve.

Be Ready!

Encl
as



CHARLES N. PEDE
Lieutenant General, USA
The Judge Advocate General



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Military Justice Redesign

SUBJECT: Military Justice Redesign Business Rules

1. Overview. The military justice redesign (MJR) is an evolutionary iteration of the Army's military-justice structure. It reflects in its organizational design the changes in Army practice since the Army established modularity and the creation of the special victim prosecutor program. It is part of an ongoing effort to ensure that the Army Judge Advocate General's Corps remains fully deployable and ready for the future operating environment.

a. Purpose. The MJR develops expertise—individually and institutionally—and organizes for the efficient administration of military justice, both through unity of effort and unity of supervision. The redesign supports a Staff Judge Advocate's (SJA) role in ensuring the expert and well-organized administration of military justice, which promotes good order and discipline, increasing the lethality of the force.

b. Justification. Driven by changes in organization and law, the practice of military justice has evolved. This redesign reflects those changes.

(1) Organization. Before the development of modularity, trial counsel were part of the Office of the Staff Judge Advocate (OSJA) and had one immediate technical supervisor, the Chief of Justice (COJ). Today, most trial counsel have three technical supervisors: the COJ, the brigade judge advocate (BJA), and the special victim prosecutor (SVP). Adding to the dispersed supervision, trial counsel authorizations moved from OSJAs to brigades.

(2) Law, Policy, and Training. Over the last ten years, the nature of Army cases has changed. In particular, half of Army cases involve a sexual-assault specification, which is a significant increase from the 18% only ten years ago. Further, the UCMJ's sexual assault statutes changed significantly in 2007, 2012, and again in 2016. Special Victim Prosecutors added a more experienced litigator who is trained in trying sexual-assault cases. Special Victim Counsel represent victims throughout the process, and in general, victims have greater statutory and regulatory rights, which are enforceable by the courts of criminal appeals. Specially trained investigators are dedicated to special victim cases. The Military Justice Act of 2016 went into effect this year, which fundamentally changed pre-trial and post-trial procedure. The explosion of digital evidence has introduced an additional requirement for experts, and many if not most cases have more than one expert for each party. *Crawford v. Washington* and its progeny have expanded an accused's confrontation right and introduced new logistical challenges to courts-martial. In short, today's practice is different than yesterday's practice, and the Army must be best structured to handle tomorrow's practice – a structure that must also remain fully deployable to support an expeditionary Army.

2. Guiding Principles. The MJR is built on three guiding principles: the development of greater *expertise*, the foundation of *unity of effort*, and the consolidation of *unity of supervision*.

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a. *Expertise.* An expert counsel has deep knowledge of the law, rules, advocacy techniques, communication skills, their unit, the Army, and constitutional and military justice values. Counsel meet this high standard through persistent training and experience. For military justice advisors, expertise is developed with commanders, through a focus on advising commanders across the gamut of military-justice issues. For litigators, that expertise is developed in the courtroom, through focused litigation experience.

b. *Organization.* Accordingly, the MJR separates today's trial-counsel functions between litigation (the MJR's trial counsel) and command advice (the MJR's military justice advisors).

(1) *Unity of effort.* Staff Judge Advocates will unify direct military-justice support to Army commanders under judge advocates assigned as military justice advisors and will unify the investigation and trial efforts under judge advocates who are assigned as trial counsel for special victim and general crimes cases.

(2) *Unity of supervision: Align authority and accountability.* Staff Judge Advocates will streamline supervisory structures to the minimum necessary to ensure mission accomplishment, and they will minimize—if not eliminate—dual supervisory arrangements. To the extent feasible, officers will be supervised by one officer, and rating relationships will align with that supervisory chain.

3. Applicability.

a. Each Office of the Staff Judge Advocate (OSJA) that supports a General Courts-Martial Convening Authority and that has three or more officers who are serving or acting as a COJ, SVP,¹ senior trial counsel, or trial counsel will re-organize under this guidance or request an exception through the Assistant Judge Advocate General for Military Law and Operations (MLO).²

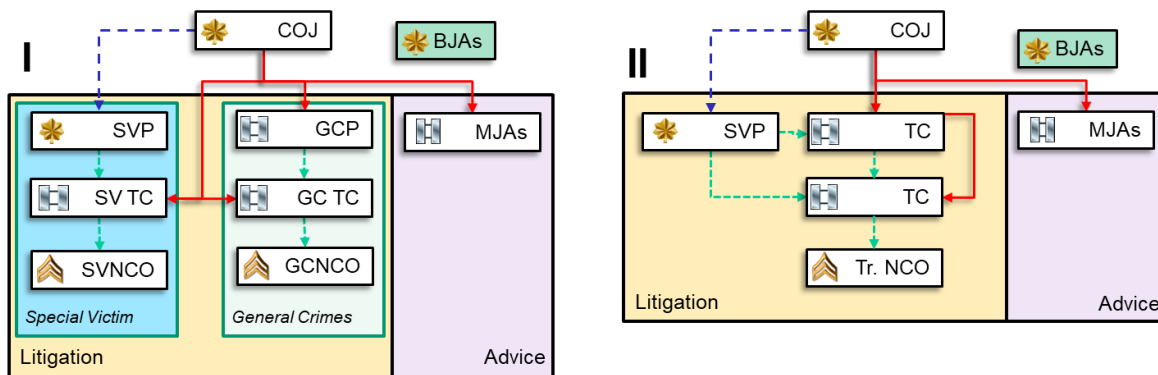
b. An OSJA with fewer than three officers occupying such roles are exempt from the redesign. Those OSJAs will nonetheless conduct an analysis on how best to achieve the guiding principles described above, including whether the OSJA or its unit should affiliate with a larger installation for litigation support. In addition, the OSJA will evaluate its duty titles and position descriptions to ensure consistency, to the extent feasible, with the duty titles and guiding principles contained in this document. An OSJA that will not re-organize under the MJR will also submit this plan in accordance with paragraph 8 of these business rules.

c. An OSJA that is already participating in the MJR pilot program will ensure that its policies are consistent with these business rules. If in the SJA's judgment it is necessary to significantly change the OSJA's policies or procedures to comply with these business rules, the OSJA will obtain the MLO's approval before implementing those revisions.

¹ A SVP is included within an OSJA's population for the purpose of whether the OSJA will re-organize under the MJR if the SVP is senior rated by that OSJA's SJA.

² Three or more government counsel is the minimum number of government counsel to enter the MJR: it allows for one trial counsel, one military justice advisor (MJA), and one chief of justice (COJ). In a three person office, the COJ or other OSJA personnel may have to supplement the substantive work of either, or both, of the trial counsel and the MJA, and an OSJA should design that potential into its procedures.

4. Models. There are two approved MJR models although the default model is Model I. An SJA may adopt Model II in circumstances in which resource limitations or specific, identified mission requirements necessitate it.



a. In either model, legal resources are devoted exclusively to either the litigation or command-advice function. This includes ensuring sufficient paralegal support for both functions.

(1) In Model I, an OSJA designates trial counsel as either special victim trial counsel or general crimes trial counsel. Depending on resources, an OSJA may have a special victim team chief and a general crimes team chief, who will have the title General Crimes Prosecutor. Although in this model a designated trial counsel's primary focus should be on either special victim or general crimes cases, an SJA has discretion to assign or detail a trial counsel to any case as circumstances require.

(2) In Model II, trial counsel litigate both special victim and general crimes cases. In this circumstance, the OSJA will ensure that its procedures provide for a general crimes capability. If the OSJA has access to an SVP, the SVP will assist the trial counsel with special-victim cases.

(3) In both models, a military justice advisor will serve in the command-advice role. If a MJA advises units in only one brigade and that brigade is also assigned a BJA, a unit may assign that brigade's BJA as the MJA's rater. A MJA who supports units in more than one brigade should be supervised and rated by the COJ.

b. In either model, a task – namely, litigation – is centralized at the GCMCA level. For units in which aspects of this task had been performed by subordinate units, e.g., a division with brigades, SJAs should consider whether resources need to be re-aligned to support this transfer of tasks.

(1) In ensuring that resources align with tasks, SJAs should engage with subordinate units. It may be necessary for an SJA to request that a subordinate unit provide an asset or assets – in particular, paralegal support – to the litigation team.

(2) Paralegals and other team members should be co-located, whenever possible, with the judge advocates who they support. In particular, paralegals who directly support the litigation mission should be co-located with the trial counsel. Of course, in some circumstances,

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missions will be shared across units, but to the extent feasible, SJAs should ensure that the paralegal assets are located alongside their attorneys.

5. Duty titles and position descriptions.³ All policies on the assignment of officers to military-justice positions will remain in effect, including the requirement that officers assigned to either a MJA or trial counsel role serve in those positions for at least 18 months. To the extent feasible, paralegals supporting trial teams should also serve a minimum of 18 months in that role. Consistency across the force in duty titles and positions description is essential. In addition to the COJ⁴ and supporting paralegals:⁵

a. Military Justice Advisor (MJA). A MJA is generally responsible for advising commanders on issues pertaining to military justice and adverse administrative actions. This includes those attorney functions within military justice that are not primarily litigation, such as reviewing complicated non-judicial punishments, advising commanders and law enforcement on search and seizure and pre-trial confinement hearings, and overseeing administrative separations, including the conduct of board hearings. It is, in short, the non-judicial or non-courtroom-related duties of today's trial counsel. A MJA's position description will generally be consistent with –

Provides prompt, sound, proactive legal advice on all military-justice related legal issues to [number] company, [number] battalion, and [number] brigade commanders, including: investigations, administrative and criminal; summary courts-martial; memoranda of reprimand; administrative elimination, separation, and reduction actions; non-judicial punishment, and all other legal issues. Trains, mentors, and assists paralegals in the processing and timely handling of all legal issues arising within their area of responsibility. Ensures expeditious investigation and smooth transfer of all criminal cases to the appropriate trial counsel.

b. SVP. An OSJA will not designate an officer a SVP without first coordinating with Trial Counsel Assistance Program (TCAP). An SVP may, in coordination with TCAP, lead the special-victim team. In that case, the SVP's position description will reflect that supervisory role (suggested language is in brackets). Regardless of whether an SVP serves in a supervisory role, an SVP's position description will generally be consistent with –

[Leads the special-victim prosecution team, which consists of [number] attorneys and [number] paralegals. Oversees the investigation and prosecution of all special-victim offenses within [the unit's] jurisdiction.] Litigates cases of sexual assault, child abuse, and domestic violence as either trial counsel or assistant trial

³ Of note, these are duty title positions. In accordance with Articles 27 and 38, the officers who are detailed to a court-martial to "prosecute in the name of the United States" are the "trial counsel" or an "assistant trial counsel." Those are the titles that will be used in any pleadings and on the record for all such officers regardless of those officers' duty titles.

⁴ The duty title for the officer who is primarily responsible for overseeing the administration of justice within a jurisdiction is "Chief, Military Justice."

⁵ These duty titles and position descriptions will be used on officer evaluation reports and officer record briefs. An OSJA may alter the duty description to reflect the unique circumstances of its office, but such alterations will be kept to a minimum to ensure that the duty description accurately reflects the officer's duties. An OSJA will not seek to alter any unit manning documents without first coordinating with PPTO.

counsel. Advises investigators on the investigation and prosecution of such cases. Ensures commanders, SJAs, and COJs receive prompt, sound, and proactive advice on all special-victim cases. Designs and delivers training for law enforcement, medical professionals, victim advocates, and other first responders in the handling and disposition of special-victim cases.

c. General Crimes Prosecutor (GCP). If an OSJA adopts Model I and if an officer is designated to lead the general-crimes team, that officer's duty title will be GCP. Of note, an OSJA will only have a GCP if it adopts Model I and if there is more than one officer assigned to the general-crimes team. A GCP's position description will generally be consistent with –

Leads the general-crimes prosecution team, which consists of [number] attorneys and [number] paralegals. Oversees the investigation and prosecution of all general-crimes offenses committed within [the unit's] jurisdiction, including drug, larceny and fraud, disobedience and desertion offenses. Litigates general-crimes (i.e., all non-special victim) cases as a trial counsel or assistant trial counsel. Advises investigators on the investigation and prosecution of general-crime cases. Ensures commanders, the SJA, and the COJ receive prompt, sound, and proactive advice on all general-crime cases. Designs and delivers training for law enforcement, medical professionals, victim advocates, and other first responders in the handling and disposition of general-crime cases.

d. Trial Counsel. An officer who is serving in a litigation billet and who is neither a SVP nor a GCP will be a trial counsel. If an OSJA adopts a Model I organization, the trial counsel who are assigned to the special victim team will be "special victim trial counsel," while trial counsel who are assigned to the general-crimes team will be "general crimes trial counsel." An OSJA will adopt an appropriate position description based on the SVP and GCP position descriptions as applicable.

6. Implementation Guidance. Each SJA will design procedures to ensure that responsibility for each distinct military justice function (e.g., preferring charges, conducting a board, litigating an Article 32 preliminary hearing, discovery, etc.) is assigned to a specific position and organization.

a. An SJA will determine the precise delineation between a trial counsel and a MJA, which will be incorporated into the OSJA's procedures.

(1) As a general rule, the judge advocate who is responsible for recommending a case's charges should advise law enforcement on that case's investigation. Thus, if the MJA drafts the charge sheet, the MJA should advise CID. This judge advocate will also be primarily responsible for the probable-cause opine.⁶ An SJA may designate either the MJA or the TC to issue a case-closing opine although an SJA should consider the benefits of assigning that task to a TC.

⁶ In developing its procedures, an OSJA should ensure that it accounts for the requirements of the Memorandum of Understanding between the JAGC and OPMG regarding opines.

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(2) Subject to the restriction below on the number of officers who may be detailed as trial counsel or assistant trial counsel, the OSJA's procedures may provide that the MJA is to be detailed to sit second chair on cases that arise from that MJA's jurisdiction.

(3) Each OSJA's procedures will provide that SJAs will not detail more than two officers to a court-martial as trial counsel and assistant trial counsel unless determined by the SJA to be in the best interests of a specific case.

(4) Cross collaboration among a MJA, a TC, and an SVP is essential. An OSJA's procedures will include processes to facilitate that collaboration, including notification requirements, specific touch points between an MJA and trial counsel, and mechanism to review and approve proposed charges.

b. For courts-martial, the OSJA's procedure will account for the responsibility for a case as it progresses from investigation through preferral and litigation. Responsibility for preferral, Article 32 preliminary hearing, discovery, motions practice, and trial should be specifically addressed and clearly assigned to the responsible officer.

c. Local procedures should also address logistical and paralegal support for litigation. In establishing these procedures, OSJAs should consider the duty locations and units of assignment for its paralegals and victim-witness liaisons. The procedures will identify the manner in which a judge advocate and a non-commissioned officer will be assigned as the lead for logistical and paralegal support for a court-martial.

d. The OSJA's procedures will also assign the responsibility for administrative tasks – in particular, maintaining Military Justice Online – for all military-justice actions. As with logistical and paralegal support, the procedures should provide for a process to identify the responsible Soldier for these tasks.

e. An OSJA that is part of or that directly supports deploying units will specifically account for deployments in its procedures.

(1) In constructing its procedures, the OSJA will assume that when a unit deploys to combat or training, it will deploy with a full complement of legal support. In conjunction with the supported unit, an SJA retains discretion to assign another company-grade officer or Soldier to the deploying unit for the deployment.

(2) By necessity, this will mean that the redesign must retain a degree of flexibility. A deploying TC may necessitate that the TC's cases be re-assigned to another TC.⁷ Further, a rear detachment must be assigned to another MJA if the MJA of that unit deploys with it. Based

⁷ Although every case is unique, and SJAs, COJs, and their TC must exercise sound professional judgment, the re-assignment of a case from one TC to another should not routinely require a re-evaluation of the entire case. Many district attorneys using a charging-cell model in which one team charges a case, while another team prosecutes it. Evidentiary developments may require re-consideration of the case's posture, but OSJAs should consider methods to minimize the disruption to a case by the departure of its trial counsel.

on a unit's deployment schedule, an SJA may also wish to consider the re-assignment of an officer from one unit to another based on that officer's role in the redesign.⁸

7. No Growth. The redesign is a no-growth effort; an OSJA will *not* be assigned additional officers to accomplish the redesign. In particular, the MJR is *not* intended to increase the number of personnel performing military justice duties.

a. The preliminary review of the pilot program suggests that the most significant cost to the redesign is in response to commander inquiries. This is a consequence of the fact that an MJA is generally advising a much larger group of commanders than today's TC (although that is counterbalanced by the fact that an MJA no longer has the primary responsibility for litigation).

b. An OSJA will adopt mitigation measures to ensure that commanders continue to receive timely advice. Such measures will be incorporated into the OSJA's procedures and can include re-tasking brigade judge advocates and brigade operational law attorneys to provide command advice. It also can include using OSJA assets to respond to inquiries or advising on subordinate unit's legal actions, such as investigations. In implementing these measures, SJAs are encouraged to consult with OSJAs that have implemented the pilot program and to maximize the use of paralegals.

c. Each OSJA will take particular care to analyze the impact on Trial Defense Service (TDS). An OSJA will ensure that it resources TDS with sufficient paralegal support "to the OSJA's detriment" if required. In addition, initial reports suggests that the MJR increases the Priority II workload for TDS, and OSJAs are encouraged to consider, in coordination with TDS, whether legal-assistance attorneys may be detailed to assist with boards, GOMOR rebuttals, and other Priority II tasks.

8. Installation Approval Process.

a. The MLO is delegated the authority to approve an OSJA's military justice redesign or a request for exception to policy.

b. Each OSJA will submit to the MLO its plan for approval. A plan must be submitted in coordination with all other OSJAs that are located on the same installation.

(1) Although there is no requirement that one OSJA's plan mirror any other OSJA's plan, each OSJA should be prepared to explain deviations among their plans and the mission-specific reasons justifying those deviations.

(2) For installations with multiple OSJAs, the OSJAs will consider the feasibility, suitability, and acceptability of consolidating their litigation operations.⁹ There is no requirement that an installation consolidate, but consolidation may provide efficiencies in case processing

⁸ Such re-assignment is subject to TJAG's reservation of authority over the assignments of field grade officers.

⁹ Installations that have consolidated include JBLM, Fort Knox (USAREC/USACC), and Joint Base San Antonio.

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and facilitate the development of greater expertise. Consolidation may be more appropriate for units that, by the nature of their missions, are less likely to deploy.

(3) An installation generally refers to OSJAs assigned to or located at the same geographic location, i.e., Fort Hood, Fort Bragg, JBLM, etc. All OSJAs assigned to the Korean peninsula are considered to be on one installation.¹⁰ The same rule applies to OSJAs that are located in Japan or assigned to installations within the National Capital Region, the states of Hawaii and Alaska, and the U.S. Army Europe area of responsibility.

c. The senior SJA assigned to that installation is responsible for coordinating the briefing. The senior SJA is encouraged to convene a working group of installation OSJAs to ensure that, to the extent feasible, installation OSJAs are synchronized.

¹⁰ The five "installations" are: Korea, U.S. Army Europe, the state of Hawaii, the State of Alaska, and the National Capital Region. OSJAs assigned to locations within each of these areas are treated as if they were assigned to the same installation, e.g., a unit at Camp Casey and a unit at Camp Humphreys are treated as if they are on one installation, namely, Korea.