

who may be untrained in investigative techniques and lacking investigative assets. Further, it may place defense counsel in ethically compromising circumstances if he or she becomes the only witness to exculpatory, inconsistent, or other statements.

Unlike public defenders who employ their own investigators, military defense counsel have none. Civilian defense investigators typically assist the defense in locating and interviewing witnesses, finding appropriate experts, and finding services to assist the defense in complying with court ordered treatment or services.⁷⁷⁶ The investigators' involvement and contributions permit civilian defense counsel to prepare for trial and may assist in reaching alternate dispositions in cases.⁷⁷⁷ Investigators can "give[] attorneys a fighting chance to develop facts and other evidence that is rarely provided to them by the government and is crucial for the proper representation of their clients" and "contribute to the efficient disposition of cases."⁷⁷⁸ One public defender from the Washington, D.C. Public Defender's Office told the Panel, "[I]t's surprising to hear about the lack of investigators involved when we're trying to uphold the Constitution here and try to give our clients the utmost in representation and being zealous."⁷⁷⁹

Currently, military defense counsel instead must rely solely on the MCIO investigation and defense counsel and defense paralegals, if available, to conduct any additional investigation. Although defense counsel can request an investigator be detailed to the defense team for a particular case, defense counsel told the Panel that convening authorities and military judges routinely deny their requests.⁷⁸⁰ *The Secretary of Defense should direct the Services to provide independent, deployable defense investigators in order to increase the efficiency and effectiveness of the defense mission in cases and the fair administration of justice.* 781 [RSP Recommendation 81] Many civilian public defender offices have investigators on their staffs and consider them critical.⁷⁸²

There are several potential ways DoD could fulfill the requirement to provide defense investigators. One would create MCIO positions within the defense counsel offices⁷⁸³ and ensure the investigators' evaluation and supervisory chains remain within the military trial defense organizations.⁷⁸⁴ Investigators could "unplug" from the parent MCIO for an assignment, "plug" into the defense system, then "unplug" to resume work for the MCIO.⁷⁸⁵ This would mirror JAG Corps attorneys who serve as both prosecutors and defense counsel, although always in different assignment tours. Another option is to hire civilian investigators as full time government employees or hire contractors to work for the defense.⁷⁸⁶ Some public defender offices hire former law enforcement personnel who get narrow-purpose credentials issued to them to perform the investigative functions for the defense.⁷⁸⁷

Regardless of the way DoD implements this requirement, military defense counsel need independent, deployable defense investigators to zealously represent their clients and correct an obvious imbalance of resources.

C. TRAINING INVESTIGATORS, PROSECUTORS, AND DEFENSE COUNSEL

Overall, military trial counsel, defense counsel, and investigators are competently and professionally performing their duties in adult sexual assault cases. Collaboration and standardization of assignments and training across the Services are areas ripe for further improvement.

1. Improving Special Victim Unit Investigator Personnel Assignments

Military and civilian agencies with SVUs recognize that detectives assigned to those units should have both the capability and commitment to investigate sexual assaults.⁷⁸⁸ Best practices in civilian SVU investigative agencies involve reassigning personnel experiencing "burn out" and careful interviewing and selection of applicants to weed out those investigators with biases or a lack of interest in investigating sexual assault

cases.⁷⁸⁹ Based on military mission requirements and the resulting need for flexibility in personnel assignments, a military Service member agent may be assigned to support an SVU or act as the lead agent on a sexual assault investigation, even though he or she did not volunteer for the position. To mitigate this problem, the MCIOs created civilian SVU team chief and investigator positions, carefully staffing them with specifically selected investigators.⁷⁹⁰ Thus, a military best practice is assigning civilian investigators to supervise the SVU, which enhances the continuity of investigations and coordination with other agencies involved in responding to sexual assault cases.

The Secretary of Defense should direct MCIO commanders and directors to carefully select and train military investigators assigned as investigators for SVUs, and whenever possible, utilize civilians for specialized investigative oversight to maximize continuity and expertise. MCIO commanders and directors should ensure that military personnel assigned to an SVU have the competence and commitment to investigate sexual assault cases. [RSP Recommendation 96]

2. Training to Improve Sexual Assault Investigations and Reports

Both military and civilian agencies recognize the possibility of potential biases or factually inaccurate perceptions of victim behavior (commonly referred to as “rape myths”) among their officers and investigators.⁷⁹¹ Left unaddressed, such biases can result in failures to aggressively follow up on a complaint of sexual assault, inappropriate disposition of cases, or inaccurate reports.⁷⁹² One of the primary ways to address these issues is through targeted training.⁷⁹³

Civilian experts report that relatively few law enforcement professionals have sufficient training to write effective reports of sexual assaults.⁷⁹⁴ In both civilian and military law enforcement communities, bias in the terms used in documenting sexual assaults sometimes inappropriately or inaccurately suggests consent of the victim.⁷⁹⁵ One expert noted, “We talk about victims having sex with their perpetrators. We talk about victims performing oral sex on their perpetrators. And we don’t think of the word picture that creates, which does not in any way show the reality of the crime.”⁷⁹⁶

The MCIOs have identified this concern and are trying to address potential biases through training and policy.⁷⁹⁷ Army CID has issued guidance about the use of language that may imply consent and has required investigators to complete the End Violence Against Women International (EVAWI) online course entitled “Effective Report Writing: The Language of Non-Consensual Sex” as part of its annual refresher training in FY 2013.⁷⁹⁸ Though the other Services do not have specific policies on this subject, all stated they train investigators on eliminating bias in investigations, particularly regarding victim behaviors.⁷⁹⁹

A best practice in both military and civilian agencies is to provide training to address potential biases and inaccurate perceptions of victim behavior, preparing officers and investigators to more effectively respond to, investigate, and document reported sexual assaults. Therefore, *the Secretary of Defense should direct commanders and directors of the MCIOs to continue training of all levels of law enforcement personnel on potential biases and inaccurate perceptions of victim behavior. Investigators should also be trained against the use of language that inaccurately or inappropriately implies consent of the victim in reports. [RSP Recommendation 97]*

3. Collaboration and Consistency in Sexual Assault Forensic Examinations

FY14 NDAA requires that the curriculum and other components of the program for certification of SANE (Adult/Adolescent) use the most recent guidelines and standards, as outlined by the Department of Justice, Office on Violence Against Women.⁸⁰⁰ While not all civilian agencies require their nurses performing forensic examinations to be certified as a SANE, all must have at least the required training as a forensic examiner (40

hours of training are required, but taking the national exam is not). Twelve hours of continuing education is required annually to maintain certification as a SANE.⁸⁰¹

While the Department of Justice national guidelines form the basis for SAFE training in the military and civilian communities, each of the Military Services instituted different programs and developed guidelines independently. *To improve and synchronize these programs and efforts, the Secretary of Defense should direct the Services to create a working group to coordinate the Services' efforts, leverage expertise, and consider whether a joint forensic exam course open to all military and DoD practitioners, perhaps at the Joint Medical Education and Training Center, or portable forensic training and jointly designed refresher courses would help to ensure a robust baseline of common training across all Services. [RSP Recommendation 101]*

4. Training Prosecutors in Adult Sexual Assault Cases

The Panel gathered and examined comparative information and received witness testimony from twenty prosecution offices across the nation to assess and compare military prosecutor training.⁸⁰² There are no national or state minimum training standards or experience floors for civilian prosecutors handling adult sexual assault crimes. Though each civilian prosecution office has different training practices, most sex crime prosecutors are trained through supervised experience handling pretrial motions, trials, and appeals.⁸⁰³ Civilian sex crimes prosecutors usually have at least three years of prosecution experience, and often more than five. Experience can also be measured by the number of trials completed, though there is no uniform minimum required number of trials to be assigned adult sexual assault cases. Some prosecutors in medium to large offices have caseloads of at least 50-60 cases, and spend at least two days per week in court.

Likewise, all the Services have specially-trained and selected lawyers who serve as lead trial counsel in sexual assault crimes cases. As discussed further below, specialized military prosecutors handling adult sexual assault cases receive advanced training and have access to a network of senior judge advocates, civilian experts, and prosecution specialists.

a. Specially Trained Prosecutor Programs

All of the Services have trained specially trained prosecutors to support the special victim capability. The Army selects trial lawyers with the most demonstrated court-martial experience, experience with special victim cases, general expertise in criminal law, and interpersonal skills in handling sensitive victim cases.⁸⁰⁴ The table below details experience and training for specialized sexual assault prosecution programs:

REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL

EXPERIENCE AND TRAINING FOR PROSECUTORS TRYING SEXUAL ASSAULT CASES⁸⁰⁵

Organization and Authorizations	Selection and Experience	Specialized Education and Training
<p>U.S. Army Special Victim Prosecutor (SVP)</p> <ul style="list-style-type: none"> • 23 Special Victim Prosecutors covering worldwide area spanning 65 installations. • Army SVPs work with CID special investigators and Special Victim Unit (SVU) investigative teams. 	<ul style="list-style-type: none"> • Individually selected from the Army’s most experienced trial lawyers. • Demonstrated court-martial experience. • Experience with sexual assault and special victim cases. • General expertise in criminal law. • Interpersonal skill in handling sensitive victim cases. • Both prosecution and defense experience are not required for selection, but is preferred.⁸⁰⁶ 	<ul style="list-style-type: none"> • Specialized military and civilian courses. • Two weeks “on the job” with a civilian district attorney’s office. • Special training on victim care and interviewing.
<p>U.S. Air Force Special Victims Unit – Senior Trial Counsel (SVU-STC)</p> <ul style="list-style-type: none"> • 16 Senior Trial Counsel, including 10 who are members of the SVU. • Work alongside 24 Air Force Office of Special Investigations (AFOSI) special investigators. • Located at 16 Air Force installations with a high number of reported sexual offenses. 	<ul style="list-style-type: none"> • Senior Trial Counsel (STC) litigate the Air Force’s most difficult cases, including the vast majority of sexual-assault prosecutions. • STC typically have at least three years of experience and are selected to be STCs. • A subset of STC are members of the Special Victims Unit (SVU-STC) and specialize in the prosecution of sexual assault and family violence cases.⁸⁰⁷ 	<ul style="list-style-type: none"> • Air Force lawyers selected for litigation positions attend the Trial and Defense Advocacy Course (TDAC) and the Advanced Trial Advocacy Course (ATAC). • All SVU-STC attend the Advanced Sexual Assault Litigation Course (ASALC), focused on sexual assault, domestic violence, and child abuse course annually. • SVU JAGs also continuously attend various advanced training courses.⁸⁰⁸
<p>U.S. Navy Military Justice Litigation Career Track (MJLCT) and Senior Trial Counsel (STC)</p> <ul style="list-style-type: none"> • 9 regionally-based Senior Trial Counsel. • Collaborate with Naval Criminal Investigative Service (NCIS) special investigators to investigate, review, and prosecute special victim cases. 	<ul style="list-style-type: none"> • With demonstrated aptitude and a desire to further specialize in litigation, may apply for inclusion in the MJLCT. • MJLCT officers spend most of their career in litigation-related billets as trial counsel, defense counsel, and military judges.⁸⁰⁹ 	<ul style="list-style-type: none"> • An MJLCT officer can advance from Specialist I to Specialist II to Expert. • Most MJLCT officers also receive an advanced law degree (a Master of Laws or LL.M.) in trial advocacy or litigation from a civilian institution. • Complete a follow-on tour in a courtroom intensive billet with leadership requirements.⁸¹⁰

**CHAPTER NINE: ORGANIZING, TRAINING, AND RESOURCING INVESTIGATORS,
PROSECUTORS, AND DEFENSE COUNSEL**

<p>U.S. Marine Corps Special Victim Qualified Trial Counsel (SVTC) and Complex Trial Teams (CTT)</p> <ul style="list-style-type: none"> • Specially qualified, geographically-assigned Complex Trial Teams led by experienced Regional Trial Counsel • Provide special victim prosecutorial expertise and support. 	<ul style="list-style-type: none"> • Prosecute a contested special or general court-martial in a special victim case as an assistant trial counsel. • Be a General Court-Martial Qualified trial counsel (experience requirement). • Receive written recommendation from the Regional Trial Counsel regarding expertise to try a special victim case. • Satisfy requisite expertise, experience, education, innate ability, and disposition to competently try special victim cases (to the approval an O-6 level Officer-in-Charge). 	<ul style="list-style-type: none"> • Complete the Marine Corps basic judge advocate training requirements, including courses at the Naval Justice School. • Attend an intermediate-level trial advocacy training course for the prosecution of special victim cases.
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b. Trial Counsel Assistance Programs and Highly Qualified Experts (HQEs)

In addition to specialized prosecutors, the Army, Navy, and Marine Corps each have a Trial Counsel Assistance Program (TCAP) that oversees training. TCAPs across the Services provide training to increase the expertise of trial counsel and lay a foundation for them to later serve as experienced and capable defense counsel, chiefs of military justice (i.e., supervisory trial counsel), deputy SJAs, and SJAs.⁸¹¹ The table below describes each Service’s TCAP organization, support, and budget:

REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL

TRIAL COUNSEL ASSISTANCE PROGRAMS⁸¹²

Organization	Responsibilities	HQE Support	Budget
U.S. Army Trial Counsel Assistance Program (TCAP)	<ul style="list-style-type: none"> Increase the expertise of trial counsel. Lay a foundation for trial counsel to later serve as experienced and capable defense counsel, chiefs of military justice (i.e., supervisory trial counsel), deputy SJAs, and SJAs.⁸¹³ 	<ul style="list-style-type: none"> 3 Highly Qualified Experts (HQEs) provide supplemental support. The HQEs are civilians with more than 30 years of combined prosecution experience.⁸¹⁴ 	<ul style="list-style-type: none"> \$468,734.64 (annual “sexual assault training funds”). \$1,407 per trial counsel per year.
U.S. Air Force No Centralized Program	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> \$2,105 per STC.⁸¹⁵
U.S. Navy Trial Counsel Assistance Program (TCAP)	<ul style="list-style-type: none"> Oversees training for trial counsel. Provides on scene and online training to prosecutors in specialized areas, including adult sexual assault. Conducts annual mobile training. Installation site-visits with training sections on special victim crimes and process inspection. Live online training. Interactive Web-based training (sponsored by TCAP and conducted by subject matter experts). 	<ul style="list-style-type: none"> In May of 2013 the Navy hired an HQE to work with its TCAP. HQE has 17 years of experience as a prosecutor and as an instructor and course coordinator for the NDAA. 	<ul style="list-style-type: none"> Not provided.
U.S. Marine Corps Trial Counsel Assistance Program (TCAP)	<ul style="list-style-type: none"> To train trial counsel to prosecute sexual assault cases.⁸¹⁶ Answers questions from prosecutors in the field, Maintains a Web site for trial counsel to share motions and best practices, Conducts training—in conjunction with Navy TCAP.⁸¹⁷ Marine Corps trial counsel must consult with their regional HQE within ten days of being detailed to any sexual assault case.⁸¹⁸ 	<ul style="list-style-type: none"> The Marine Corps recently hired three HQEs to assist in all sexual assault cases; Two of the HQEs are assigned to the prosecution.⁸¹⁹ 	<ul style="list-style-type: none"> \$250,000 (SAPR/ SVC annual training funds). \$2,778 per trial counsel per year.

The Service Judge Advocate Generals and the Staff Judge Advocate to the Commandant of the Marine Corps should sustain or increase training of judge advocates to maintain the expertise necessary to litigate adult sexual assault cases in spite of the turnover created by personnel rotations within the Services’ Judge Advocates General Corps. [RSP Recommendation 110]

Trial counsel in all the Military Services generally have more standardized and extensive training than some of their civilian counterparts, but fewer years of prosecution and trial experience. The Services all use a combination of experienced supervising attorneys, systematic sexual assault training, and smaller caseloads to address experience disparities.

As a promising option for increasing experience levels of military trial counsel, the Service TJAGs and the Staff Judge Advocate to the Commandant of the Marine Corps should study the Navy’s Military Justice Litigation Career Track (MJLCT), outlined in the chart above,⁸²⁰ to determine whether this model, or a similar one, would be effective in enhancing expertise in litigating sexual assault cases in his or her Service.

5. Military Defense Counsel Training and Experience

The Panel compared civilian approaches and examined best and promising practices in assessing training and experience levels of military defense counsel. Defense counsel handling adult sexual assault cases in all the Services receive specialized training.⁸²¹ Many also have previous experience as trial counsel.⁸²² The table below illustrates training and experience of defense counsel across the Services:

EXPERIENCE AND TRAINING FOR DEFENSE COUNSEL TRYING SEXUAL ASSAULT CASES⁸²³

Organization	Experience	Training
U.S. Army Defense Counsel	<ul style="list-style-type: none"> Majority of DCs have prior courtroom experience. No specific minimum experience required. Experience sitting “second chair” until supervisor deems fit to try cases as first chair. 	<ul style="list-style-type: none"> Graduate of the Judge Advocate Officer Basic Course. Defense Counsel “101,” taught by DCAP. Advanced Trial Advocacy Courses.
U.S. Air Force Defense Counsel	<ul style="list-style-type: none"> The Air Force is unique in that defense counsel are selected in a competitive, best-qualified standard by the Air Force Judge Advocate General. Most defense counsel arrive with two to five years of experience working in a base legal office, which includes time as a trial counsel in courts-martial. New defense counsel normally have between eight and 10 courts-martial trials before starting as a defense counsel.⁸²⁴ 	<ul style="list-style-type: none"> Specialized courses provided by the Air Force Judge Advocate General’s School. On-the-job training. Group training remains a challenge because of geographic diversity of counsel and length of tours.⁸²⁵ Out of the 19 Senior Defense Counsel regions, only three (San Antonio, Colorado Springs and the National Capitol Region) have the majority of their bases in close enough proximity to drive to group training.⁸²⁶

<p>U.S. Navy Defense Counsel</p>	<ul style="list-style-type: none"> • Following their first 24-month tour handling administrative separations and other non-judicial issues, Navy Judge Advocates become eligible to be assigned to a Defense Service Office (DSO) as a defense counsel.⁸²⁷ • MJLCT officers are stationed in all DSO headquarters offices and some detachments, which are smaller regional offices.⁸²⁸ 	<ul style="list-style-type: none"> • Once selected, counsel receive additional training, including a basic trial advocacy course focusing on courtroom advocacy. • Within the first year at a DSO, defense counsel also attend the defending sexual assault cases class, an intense one-week course involving experts from forensics and psychology and very experienced civilian defense counsel.⁸²⁹
<p>U.S. Marine Corps Defense Counsel</p>	<ul style="list-style-type: none"> • The vast majority of the Marine Corps' 72 defense counsel are first-tour judge advocates with less than three years of experience as an attorney.⁸³⁰ • They typically serve 18 months as defense counsel before moving to another assignment. • The average litigation experience of both senior defense counsel and defense counsel is 14 months, which includes both prosecution and defense time.⁸³¹ 	<ul style="list-style-type: none"> • Defense counsel training requirements are set forth in Marine Corps policy.⁸³²
<p>U.S. Coast Guard Defense Counsel</p>	<ul style="list-style-type: none"> • By memorandum of agreement between the Coast Guard and the Navy JAG Corps, the Navy is principally responsible for defending Coast Guard members accused of UCMJ crimes.⁸³³ • In return, four Coast Guard judge advocates are detailed to work at various Navy Defense Service offices on two-year rotations, which provide another significant source of trial experience to Coast Guard judge advocates.⁸³⁴ 	<ul style="list-style-type: none"> • Coast Guard Defense Counsel attend Navy Defense Training.

Military defense counsel in all the Services tend to have more standardized and extensive course training than their civilian counterparts to compensate for a relative lack of experience.⁸³⁵ Like their prosecution counterparts, defense counsel receive training, oversight, and mentoring from senior counsel.⁸³⁶ *The Services should continue to provide experienced defense counsel through the regional defense organizations and draw from personnel with extensive trial experience and expertise in the Reserve component. [RSP Recommendation 85]*

It is difficult to develop defense experience given the relatively low number of courts-martial and personnel turnover. The Marine Corps faces particular problems with personnel turnover because their attorneys perform line duty mission requirements and may serve in defense counsel tour lengths as short as 12 months.⁸³⁷ As previously discussed, not all military defense counsel possess trial experience prior to assuming the role of defense counsel. Some defense counsel said they were assigned adult sexual assault cases during their first tour of duty, when they had no prior litigation experience.⁸³⁸

CHAPTER NINE: ORGANIZING, TRAINING, AND RESOURCING INVESTIGATORS, PROSECUTORS, AND DEFENSE COUNSEL

The Service TJAGs and Staff Judge Advocate to the Commandant of the Marine Corps should permit only counsel with litigation experience to serve as lead defense counsel in a sexual assault case as well as set the minimum tour length of defense counsel at two years or more, except when a lesser tour length is approved by the Service TJAG or Staff Judge Advocate to the Commandant of the Marine Corps, or designee, because of exigent circumstances or to specifically enable training of defense counsel under supervision of experienced defense counsel. [RSP Recommendation 86]

6. Defense Counsel Assistance Programs (DCAPs) and HQEs

All of the Military Services except the Air Force have DCAPs and HQEs to assist with training and trial consultation in all cases, including sexual assaults. The table below describes these programs:

DEFENSE COUNSEL ASSISTANCE PROGRAMS⁸³⁹

Organization	Responsibilities	HQE Support ⁸⁴⁰	Budget
U.S. Army Trial Defense Service and Defense Counsel Assistance Program (DCAP)	<ul style="list-style-type: none"> Provides training, resources and assistance for defense counsel worldwide, including “reach back” capability. Coordinates with, but operates independently from The Judge Advocate General’s Legal Center and School. “Available around the clock for case consultation. [In FY13], DCAP received over 2,000 inquiries from defense counsel in the form of emails, phone calls and in-person inquiries during training events.”⁸⁴¹ 	<ul style="list-style-type: none"> Two civilian HQEs. Both HQEs are former military judges and experienced trial practitioners with over 40 years of combined military justice experience. 	<ul style="list-style-type: none"> \$377,178.96 (annual). \$1,033.36 per counsel.
U.S. Air Force No Centralized Program	<ul style="list-style-type: none"> Training and support provided internally through supervisory counsel. 	<ul style="list-style-type: none"> No HQE Support. 	<ul style="list-style-type: none"> \$350,000.00 annually for “other than litigation” travel. \$1,870.00 per counsel.

<p>U.S. Navy Defense Counsel Assistance Program (DCAP)</p>	<ul style="list-style-type: none"> • In conjunction with the Naval Justice School, provides ongoing training to current and prospective defense counsel worldwide, through on-site command visits and online training.⁸⁴² • Tracks trends and identifies areas for training; monitors evaluations for improvement in practice.⁸⁴³ • Hosts an online forum where counsel post, download, and share resources involving sexual assault litigation as well as a “discussion board” where defense counsel anywhere in the world can receive nearly instantaneous assistance from DCAP and the Navy defense bar.⁸⁴⁴ 	<ul style="list-style-type: none"> • One HQE (former military judge with extensive criminal law experience). 	<ul style="list-style-type: none"> • Not Provided.
<p>U.S. Marine Corps Defense Services Organization (DSO)</p>	<ul style="list-style-type: none"> • Provides training and support to 72 defense counsel, most of whom are first-tour judge advocates with less than three years of experience as an attorney.⁸⁴⁵ 	<ul style="list-style-type: none"> • One HQE, a retired civilian public defender from San Diego with over 30 years of experience.⁸⁴⁶ 	<ul style="list-style-type: none"> • DSO has access to \$250,000 in SAPR/SVC Training Funds. • \$1870.00 per counsel.

The Service Secretaries should direct that current training efforts and programs be sustained to ensure that military defense counsel are competent, prepared, and equipped. [RSP Recommendation 84]

7. Ensuring the Continued Effectiveness of Military Defense Counsel

In contrast to assessment of the performance of prosecutors there are currently no requirements or pending initiatives for the Services to measure military defense counsel performance in trying sexual assault cases. It is difficult for civilian or military defense counsel to measure success in defending those accused of sexual assault offenses. Just as conviction rates are not an accurate or desirable measure of prosecution success, acquittal rates are also not an accurate or desirable measure of defense success. Instead, a favorable plea agreement, sentence, or agreement to dispose of a case through alternate means for a client may be an accomplishment. Additionally, high acquittal rates in military sexual assault cases may indicate that staff judge advocates are recommending, and convening authorities are referring, cases that do not warrant trial by court-martial.

Therefore, the Secretary of Defense should direct the Services to assess military defense counsels’ performance in sexual assault cases similar to performance assessment of prosecutors and identify areas that may need improvement. [RSP Recommendation 87]

8. Sexual Assault Working Group for Military Lawyers

Currently, all Services send attorneys to the training courses and JAG schools of the other Services. They also informally share resources, personnel, lessons for training, and collaborate on some training, enabling counsel to share successful tactics, strategies, and approaches.⁸⁴⁷ However, these processes are not formal or standardized. There does not appear to be any synchronized effort in creating, funding, and growing training programs—as evidenced by the varying names and acronyms used to describe similar programs. For example, military judges in the Navy prepare quarterly evaluations of counsel’s advocacy that are forwarded to the Chief Judge of the Navy for review and shared with DCAP for use in training plans.⁸⁴⁸ It does not appear that the other Services similarly measure and assess performance. The absence of standardization and coordination can create confusion, duplication of effort, and a lack of clarity and credibility to those outside of the system. Conversely, if formalized and shared across the Services, these processes and terms could enhance comparability and efficiency.

The Service TJAGs and the Staff Judge Advocate to the Commandant of the Marine Corps should sustain and broaden the emphasis on developing and maintaining shared resources, expertise, and experience in prosecuting and defending adult sexual assault crimes. [RSP Recommendation 111] To that end, a working group is an effective means of showing progress and development and ensuring that initiatives and promising practices are disseminated throughout the Services to avoid duplication and continue improving training practices. Therefore, the Secretary of Defense should direct the establishment of a DoD judge advocate criminal law joint training working group to optimize sharing of best practices, resources, and expertise for prosecuting and defending adult sexual assault cases. The working group should produce a concise written report, delivered to the Service TJAGs and the Staff Judge Advocate to the Commandant of the Marine Corps at least annually, for the next five calendar years. The working group should identify best practices, strive to eliminate redundancy, consider consolidated training, consider ways to enhance expertise in litigating sexual assault cases, and monitor training and experience throughout the Services. The working group should review training programs such as: the Army’s Special Victim Prosecutor program; the Navy’s Military Justice Litigation Career Track (MJLCT); the Highly Qualified Expert (HQE) programs used for training in the Army, Navy, and Marine Corps; the Trial Counsel Assistance and Defense Counsel Assistance Programs (TCAP and DCAP); the Navy’s use of quarterly judicial evaluations of counsel; and any other potential best practices, civilian or military. [RSP Recommendation 112]

D. RESOURCING AND FUNDING

1. Defense Services Funding

Maintaining adequate resources for the defense of military personnel accused of crimes, including sexual assault, is essential to the legitimacy and fairness of the military justice system. Unlike many civilian public defender offices,⁸⁴⁹ military defense counsel organizations generally do not maintain their own budget; instead, they receive funding from the convening authority, their Service legal commands, or other sources.

Some civilian public defender offices maintain their own budgets or request experts through a trial judge who manages the budget.⁸⁵⁰ In the federal system, there is specific funding to pay for defense witness travel and experts for Federal Defender organizations. Federal discovery rules generally require the defense to disclose experts and other witnesses to the government before trial, but not as early as military defense counsel. Military defense counsel must also request their witnesses through the trial counsel.⁸⁵¹

The Panel concludes that separate budgets for military defense organizations are not necessary at this time. However, *the Service Secretaries should ensure military defense counsel organizations are adequately resourced in funding resources and personnel, including defense supervisory personnel with training and experience*

comparable to their prosecution counterparts, and direct the Services to assess if that is the case. [RSP Recommendation 82]

2. Reviewing Defense Counsel Training Budgets

During site visits and meetings, defense counsel and HQEs voiced concerns about training budget funding inequities between prosecutors and defense counsel, particularly in the Marine Corps.⁸⁵² Defense counsel from the Air Force, Army, and Navy also mentioned inequities in funding generally between the prosecution and defense, but did not specifically emphasize training. Some defense counsel told the Panel that because they do not have independent budgets, their training opportunities were insufficient and unequal to those of their trial counsel counterparts.⁸⁵³

The Services provided details about their training budgets, which reflected that defense counsel training budgets are generally equivalent to those for military prosecutors. *The Service TJAGs and the Staff Judge Advocate to the Commandant of the Marine Corps should review military defense counsel training for adult sexual assault cases to ensure funding of defense training opportunities is on par with that of trial counsel. [RSP Recommendation 83]*

3. Maintaining Experienced Civilian Advocates

As discussed in the TCAP, DCAP, and HQE sections above, experienced civilian advocates play an important role training both prosecution and defense counsel in the Army, Air Force, Navy, and Marine Corps. Given the attrition and transience of military counsel, civilian involvement in training adds an important perspective and ensures a base level of experience and continuity. Most HQEs have 20-30 years of criminal law experience, often in both civilian and military practice—rare among lawyers in the Services.⁸⁵⁴ Working in tandem with TCAP and DCAP, the HQEs add substantial specialized expertise in adult sexual assault litigation. Such civilian expert advocate participation also adds transparency and validity to military counsel training programs.

The Service TJAGs and the Staff Judge Advocate to the Commandant of the Marine Corps should continue to fund and expand programs that provide a permanent civilian presence in the training structure for both trial and defense counsel. The Services should continue to leverage experienced military Reservists and civilian attorneys for training, expertise, and experience. [RSP Recommendation 119]

4. Supporting Military Judicial Training

Military judges, both trial and appellate, are selected based on their legal experience, military service record, and exemplary personal character, including sound ethics and good judgment.⁸⁵⁵ Military judges participate in joint training at the Army's Judge Advocate General's Legal Center and School before their respective Service TJAGs will certify them to be judges.⁸⁵⁶ This three-week course at the Army JAG School in Charlottesville, Virginia, covers judicial philosophy, case management, and specific scenarios.⁸⁵⁷ The course, which is designed around a sexual assault case, includes substantive criminal law and procedure, practical exercises designed to simulate trial practice, and scenarios focusing on factors for consideration in reaching appropriate sentences.⁸⁵⁸ The chief trial judges of all Services collaborate to create the Military Judge Course curriculum, and all Services provide instructors.⁸⁵⁹ Experienced senior military judges grade the capstone exercise, which is a mock trial over which student military judges must preside.⁸⁶⁰

The Service TJAGs and the Staff Judge Advocate to the Commandant of the Marine Corps should continue to fund sufficient training opportunities for military judges and consider more joint and consolidated programs. [RSP Recommendation 120]

5. Ensuring Funding for Investigator Training

The MCIOs face an ongoing challenge of ensuring adequate funding is available to send investigators to advanced sexual assault investigation training courses. The increased workload and agent turnover requires training more investigators.⁸⁶¹ Congress has not specifically set aside money for sexual assault investigator training, leading to concerns that as resources wane within the military, the Services may be forced to cut training funds.⁸⁶² It is critical to sustain funding for training investigators, often the first responders to a report of sexual assault. Therefore, *Congress should appropriate funds for training of sexual assault investigation personnel. The Secretary of Defense should direct the Service Secretaries to program and budget funding, as allowed by law, for the MCIOs to provide advanced training on sexual assault investigations to SVU investigators. [RSP Recommendation 98]*

6. Ensuring Resourcing of Special Victim Capability

The DoD has dedicated an immense amount of resources to combat sexual assault. However, DoD did not authorize any additional personnel to the individual Services specifically to meet the requirement for special prosecutors within the Special Victim Capability, although the Services may have obtained additional personnel prior to the Congressional mandate. Currently, the Military Services fully fund special prosecutors' case preparation requirements.

Prior to the Congressional requirement for a Special Victim Capability in FY13 NDAA, the Services established programs that centralized specially trained prosecutors for complex cases.⁸⁶³ The requirement to establish a Special Victim Capability within each Service did not significantly impact overall JAG personnel requirements because the Services were already developing these capabilities and, depending on the Service, may have already received additional authorizations for personnel. However, in a time of scarce resources and drawdown, it may be difficult to maintain this kind of capability in each of the different Services. Therefore, DoD and the Services need to ensure continued resources and permanent personnel are dedicated to this capability. Accordingly, *the Service Secretaries should continue to assess and meet the need for well-trained prosecutors to support the Services' Special Victim Capabilities, especially if there is increased reporting. [RSP Recommendation 106]*