

VI. TRAINING PROSECUTORS, DEFENSE COUNSEL, AND MILITARY JUDGES

INTRODUCTION

The Subcommittee's assessment and comparison of the training levels of military counsel to those of their civilian counterparts concentrated on gathering information to determine whether military counsel are providing competent representation in adult sexual assault cases. Overall, the Subcommittee found that military trial counsel and defense counsel are competently representing their clients in adult sexual assault cases.

The Subcommittee's tasks included examining the importance of training and experience in defending or prosecuting adult sexual assault crimes. However, this assessment and comparison of "training" and "experience" is inherently complicated because a significant portion of training for trial practitioners is supervised experience. In addition, there appears to be no uniform agreement in the military or civilian systems on a requisite minimum level of training or experience for adult sexual assault cases.

The evidence the Subcommittee considered revealed the ingredients of an effective sex crimes prosecutor or defense counsel are not limited to the number of trials completed. Many factors affect a meaningful assessment of competent representation, including attorney caseloads, time for trial preparation, level and sophistication of support staff, and collateral duties. Likewise, a good prosecutor must have the interpersonal and emotional skills required to successfully build rapport with victims, collaborate with law enforcement investigators, and cooperate with experts and other witnesses. These competencies, and the training for them, are not easily subjected to tidy assessments, though practitioners in both systems recognized their importance. Similarly, defense counsel identified interpersonal skills of interviewing clients, working with defense investigators, and having an evenhanded approach to adverse witnesses as crucial to success.

Consequently, there is no checklist to measure competent training with a guarantee of effective representation. Nonetheless, after carefully examining the training programs and curriculum of the Services and civilian systems, the Subcommittee did identify several promising practices. These include using experienced civilian practitioners as trainers, collaborating among the Services, and creating programs in the Services designed to foster enduring expertise. Consistent feedback from experienced supervisory counsel, judges, and victims is another important tool for ensuring counsel on both sides maintain effective representation.

A. OVERVIEW – BASIC MILITARY LAWYER TRAINING, SELECTION, AND CERTIFICATION STANDARDS

In all Services, the basic legal training curricula train judge advocates (JAGs) in a breadth of subjects, including basic trial advocacy, trial procedure, and criminal law.³⁹³ In addition, each Service's curriculum has a specific focus on litigating adult sexual assault cases that begins in the basic legal training courses.³⁹⁴ A more detailed overview of the training curriculum for each Service appears below and in the appendices.

1. Basic Lawyer Training – Army

In the Judge Advocate Officer Basic Course (JAOBC), new judge advocates learn the military justice system through lecture, seminar, and practical exercise instruction.³⁹⁵ The ten-and-a-half-week course prepares them to provide military justice advice and to serve as counsel in courts-martial and administrative board proceedings.³⁹⁶ Classes cover almost all areas of criminal law and procedure³⁹⁷ and students participate as trial counsel and/or defense counsel in two moot court exercises.³⁹⁸ The course uses a sexual assault case scenario, which emphasizes key aspects of sexual assault cases such as victim-witness programs, victim behavior, and related evidentiary rules.³⁹⁹

The Army JAG Corps trains and certifies all judge advocates for assignment as trial counsel, which includes the ability to prosecute sexual assault cases.⁴⁰⁰ As detailed below, all trial counsel complete the JAOBC trial advocacy training, the New Prosecutor/Essential Strategies in Sexual Assault Prosecution Course, and the Intermediate Trial Advocacy Course. All of these training courses employ a sexual assault prosecution scenario.⁴⁰¹

2. Basic Lawyer Training – Air Force

All Air Force judge advocates receive trial advocacy training and preparatory moot court experience during their nine-week initial training course, the Judge Advocate Staff Officer Course (JASOC).⁴⁰² This training

393 See *Transcript of RSP Comparative Systems Subcommittee Meeting 276-80* (Jan. 7, 2014) (testimony of Lieutenant Colonel Matthew Calarco, U.S. Army).

394 See Services' Responses to Request for Information 1(d) (Nov. 1, 2013); Services' Responses to Request for Information 75(b) and 75(c) (Dec. 19, 2013).

395 See, e.g., U.S. Army, "ARMY JAG CORPS," at <http://www.goarmy.com/jag/about/training.html>; Army's Response to Request for Information 1(d) (Nov. 1, 2013).

396 See *id.*

397 "The attorney strength of the Active Army (AA) JAGC at the end of 2013 was 1,970 (including general officers). This total does not include 88 officers attending law school while participating in the Funded Legal Education Program (FLEP)." ANNUAL REPORT SUBMITTED TO THE COMMITTEES ON ARMED SERVICES OF THE UNITED STATES SENATE AND THE UNITED STATES HOUSE OF REPRESENTATIVES AND TO THE SECRETARY OF DEFENSE, SECRETARY OF HOMELAND SECURITY, AND THE SECRETARIES OF THE ARMY, NAVY, AND AIR FORCE PURSUANT TO THE UNIFORM CODE OF MILITARY JUSTICE FOR THE PERIOD OCTOBER 1, 2012 TO SEPTEMBER 30, 2013, at 49 [hereinafter CAAF FY13 ANNUAL REPORT], available at <http://www.armfor.uscourts.gov/newcaaf/annual/FY13AnnualReport.pdf>.

398 Army's Response to Request for Information 1(d) (Nov. 1, 2013).

399 *Id.*

400 *Id.*

401 DoD SVC REPORT, *supra* note 171, at 18.

402 *Id.* at 315-16.

includes 130 hours of military justice instruction, including a fact scenario that is usually based on a sexual assault case.⁴⁰³ JAGs must graduate from JASOC, serve effectively as trial or assistant trial counsel, and be recommended by a supervisory Staff Judge Advocate (SJA) and military judge to become certified as trial and defense counsel, a prerequisite to serving as lead counsel in sexual assault cases.⁴⁰⁴ All new judge advocates receive extensive trial advocacy training, pass graded exams, and undergo realistic courtroom-based exercises before being certified as competent to perform their duties by The Judge Advocate General (TJAG) of the Air Force.⁴⁰⁵

3. Basic Lawyer Training – Navy/Marine Corps/Coast Guard

“Improving the quality and increasing the availability of military justice and trial advocacy training was a cornerstone of the JAG’s agenda for FY13.”⁴⁰⁶

In the ten-week Basic Lawyer Course (BLC), the initial training course for all judge advocates in the Navy, Marine Corps, and Coast Guard, 57 percent of the curriculum pertains to military justice.⁴⁰⁷ Attorneys must complete the course to be certified to try cases.⁴⁰⁸

During the BLC, judge advocates receive extensive training on several topics related to sexual assault.⁴⁰⁹ Students study the related rules of evidence and sexual assault criminal provisions under Articles 120 and 125 of the UCMJ.⁴¹⁰ They also learn how to advise convening authorities about sexual assault issues, and study victim and witness assistance programs.⁴¹¹ Students learn about victims’ rights, how to provide legal assistance to sexual assault victims, and the role of the victim’s legal counsel in the process.⁴¹² One of the final milestones of the BLC is a mock trial judged and graded by sitting military judges of the Navy, Marine Corps, and Coast Guard.⁴¹³ For the mock trial, 50 percent of the students are assigned a sexual assault case and are required to write and litigate Military Rule of Evidence 412 motions.⁴¹⁴ Students not assigned as counsel are assigned witness roles, introducing them to many of the same issues.⁴¹⁵

403 *Id.* at 317.

404 Air Force’s Response to Request for Information 1(d) (Nov. 1, 2013).

405 *Id.*

406 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 57.

407 *Transcript of RSP Comparative Systems Subcommittee Meeting 344* (Jan. 7, 2014) (testimony of Lieutenant Commander Justin McEwan, U.S. Navy); see also Navy’s Response to Request for Information 1(d) (Nov. 1, 2013).

408 *Transcript of RSP Comparative Systems Subcommittee Meeting 344* (Jan. 7, 2014) (testimony of Lieutenant Commander Justin McEwan, U.S. Navy).

409 *Id.*

410 *Id.* Article 120 is the military’s sexual assault statute; Article 125 is the military’s sodomy statute.

411 *Transcript of RSP Comparative Systems Subcommittee Meeting 344* (Jan. 7, 2014) (testimony of Lieutenant Commander Justin McEwan, U.S. Navy); see also Navy’s Response to Request for Information 1(d) (Nov. 1, 2013).

412 *Transcript of RSP Comparative Systems Subcommittee Meeting 344* (Jan. 7, 2014) (testimony of Lieutenant Commander Justin McEwan, U.S. Navy).

413 *Id.* at 345.

414 Military Rule of Evidence 412 is the military’s “rape shield” provision.

415 *Transcript of RSP Comparative Systems Subcommittee Meeting 345* (Jan. 7, 2014) (testimony of Lieutenant Commander Justin McEwan, U.S. Navy).

Recommendation 22-A: The Secretary of Defense 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 adult sexual assault cases. The working group should produce a concise written report, delivered to the Service Judge Advocate Generals (TJAGs) at least annually, for the next five calendar years.

The working group should identify best practices, strive to eliminate redundancy, consider consolidated training, and monitor training and experience throughout the Military Services. The working group should review training programs such as: the Army's Special Victim Prosecutor (SVP) 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.

Recommendation 22-B: 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 adult sexual assault crimes.

Finding 22-1: Currently, all Military Services send members to training courses and Judge Advocate Generals (JAG) Corps schools of the other Services. The Military Services also informally share resources, personnel, lessons for training, and collaborate on some training. This enables counsel to share successful tactics, strategies, and approaches, but is not formalized and has not led to the clarification of terms and processes that would enhance comparability and efficiency.

Discussion

Existing collaboration among the Services is a promising practice. Witnesses told the Subcommittee that the Service JAG schools collaborate in creating their curricula and sending members to be faculty and students at the schools of other Services.⁴¹⁶ However, the information received does not appear to demonstrate any synchronized effort in creating, funding, and growing programs—as evidenced by the varying names and acronyms used to describe similar programs.⁴¹⁷ As noted elsewhere in this report, this can create confusion, duplication of effort, and a lack of clarity and credibility to those outside of the system.

The Subcommittee identified a working group as 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.

416 See, e.g., *id.* at 353-58 (testimony of Colonel Ken Theurer, U.S. Air Force); *id.* at 355-56 (testimony of Lieutenant Commander Justin McEwan, U.S. Navy).

417 See, e.g., Recommendations 32-D, 49-A, and 49-B, and accompanying discussions, *infra*.

B. SPECIALIZED SEXUAL ASSAULT TRAINING FOR CIVILIAN AND MILITARY PROSECUTORS

Recommendation 23: The Service TJAGs and the Staff Judge Advocate to the Commandant of the Marine Corps sustain or increase training of judge advocates in order to maintain the expertise necessary to litigate adult sexual assault cases in spite of the turnover created by personnel rotations within the JAG Corps of each Military Service.

Finding 23-1: There are no national or state minimum training standards or experience for civilian prosecutors handling adult sexual assault crimes. Though each civilian prosecution office has different training practices, most sex crime prosecutor training occurs through supervised experience handling pretrial motions, trials, and appeals.

Finding 23-2: 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.

Finding 23-3: All the Military Services have specially-trained and selected lawyers who serve as lead trial counsel in sexual assault crimes cases. Defense counsel handling adult sexual assault cases in all the Military Services are also trained; many previously served as trial counsel.

Discussion

1. Overview of Civilian Prosecutor Sexual Assault Training and Experience

Civilian jurisdictions often hire new prosecutors with little or no prosecutorial experience, but many have previous experience as a law clerk or intern. In large offices and jurisdictions around the country, new prosecutors will generally spend two to three years prosecuting misdemeanor offenses to gain experience in motions practice, managing a large caseload, cross-examining the accused, and preparing and presenting testimony of victims, witnesses and experts. Some prosecutors continue to gain experience working in units preparing grand jury testimony and prosecuting juvenile or less serious felony offenses for another one to three years. Afterward, prosecutors with about five to ten years of prosecution experience may be selected for sex crimes units.⁴¹⁸ However, there are variations throughout the United States. For example, in the Philadelphia District Attorney's Office, counsel begin working in the Family Violence and Sexual Assault Section Trial Division after two and one-half years at the office and normally depart the unit and DA's office after five years.⁴¹⁹

418 See, e.g., *Transcript of RSP Public Meeting 432* (Dec. 12, 2013) (testimony of Ms. Martha Bashford, Chief, Sex Crimes Unit, New York County District Attorney's Office) ("The very, very minimal amount of experience is three years, and normally our entry level is at five or six years of prosecuting statements. . . . I want to know how many statements you've taken from defendants, how many search warrants have you done, how many DNA cases have you put on, how many fingerprint experts have you put on, how many defendants have you cross-examined, how many jury trials have you had, how many judge trials you've had[.]"); see also *id.* at 460 (testimony of Ms. Kelly Higashi, U.S. Attorney's Office for the District of Columbia) ("Similar to what Martha just said, we have the same type of system where in order to get into that unit, people have to wait for a vacancy. They have to apply. We review their experience, we review their experience similar to what Martha said with DNA, with vulnerable victims.").

419 See *Minutes of RSP Comparative Systems Subcommittee Preparatory Session, PSARC 5-6* (Feb. 20, 2014) ("There are 20 full time prosecutors in the DA's family and sexual assault unit. They have four new attorneys who handle domestic violence cases, preliminary hearings, misdemeanors, and nonjury trials. There are 18 'major level' prosecutors with 2.5-5 years [of] experience. The major level prosecutors handle felony domestic violence, child cases, and all adult sexual assault cases. The most senior attorney in the office

2. Civilian Training

In many large prosecution offices, instead of formal classroom training, funding limitations and prioritization of case work require a civilian prosecutor's primary source of training to be supervised on-the-job courtroom work, supplemented by topical seminars taught by senior prosecutors within the office.⁴²⁰ Daily or near-daily courtroom work is combined with supervisor feedback.⁴²¹ However, training in civilian prosecutors' offices also varies by office size.⁴²²

In larger jurisdictions, prosecutors typically progress through a few weeks of formal training involving classroom and seminar instruction.⁴²³ Training programs will cover criminal law, criminal procedure, evidence, and ethics, and usually place substantial emphasis on developing trial practice (courtroom) skills.⁴²⁴ The core training of prosecutors, including those who later become sex crimes prosecutors, occurs in a supervised progression through a series of assignments, beginning with misdemeanors and moving through general felony crimes.⁴²⁵ During this progression, prosecutors work with senior colleagues and supervisors to learn

that handles sex crimes has 7 years [of] experience and six attorneys have 5 years [of] experience.”).

- 420 The Executive Office of United States Attorneys (EOUSA) categorizes offices into four types based upon attorney staffing levels – extra-large (greater than or equal to 100 attorneys), large (between 45 and 99.9 attorneys), medium (between 25 and 44.9 attorneys), and small (less than 25 attorneys). The term “large” here generally means greater than or equal to 100 attorneys. See EOUSA, RESOURCE MANAGEMENT OF UNITED STATES ATTORNEYS’ OFFICES (AUDIT REPORT 03–03) ch. 3 (Nov. 2008), available at <http://www.justice.gov/oig/reports/EOUSA/a0903/>; see, e.g., *Written Statement of Mr. Bill Montgomery, Maricopa County Attorney, to RSP* (submitted Dec. 12, 2013); see also *Transcript of RSP Public Meeting 455* (Dec. 12, 2013) (testimony of Ms. Kelly Higashi that the Sex Offense and Domestic Violence Section of the U.S. Attorney’s Office for District of Columbia has 35 prosecutors); *id.* at 431 (testimony of Ms. Martha Bashford that Manhattan District Attorney’s Office has 60 sex crimes prosecutors); *id.* at 487 (testimony of Ms. Wendy Patrick, Deputy District Attorney, Sex Crimes and Stalking Division, that San Diego County District Attorney’s Office has 300 prosecutors).
- 421 See, e.g., *Transcript of RSP Public Meeting 459* (Dec. 12, 2013) (testimony of Ms. Kelly Higashi, U.S. Attorney’s Office for the District of Columbia) (“[Supervisors] observe every felony trial and give support during the trial, and then feedback after the trial”); see also *id.* at 434 (testimony of Ms. Martha Bashford, New York County District Attorney’s Office) (“[A supervisor] will sit in on every single felony trial, no matter how senior the [prosecutor] is.”).
- 422 See *Transcript of RSP Comparative Systems Subcommittee 96* (Jan. 7, 2014) (testimony of Ms. Candace Mosley, Director of Programs and Director National Center for the Prosecution of Violence Against Women, Program Manager, National Criminal Justice Academy, National District Attorneys Association (NDAA)) (describing impact office size has on training requests to NDAA and experience levels of prosecutors).
- 423 See, e.g., *Written Statement of Mr. Bill Montgomery, Maricopa County Attorney, to RSP* (submitted Dec. 12, 2013) (“Sex crimes prosecutors undergo specific training in their first year of assignment, learning how to address issues such as how suspects and victims of sex assault should be interviewed, how DNA is collected and analyzed, why DNA may not be present in a case, and the issues surrounding mixed DNA samples. Prosecutors are also trained on investigation protocols, the importance of confrontation calls, and the use of multidisciplinary teams housed at family advocacy centers to provide one-stop services for sex assault victims to address medical exams, investigative interviews, counseling, and service referrals.”); see also *Transcript of RSP Comparative Systems Subcommittee Meeting 128–29* (Jan. 7, 2014) (testimony of Ms. Viktoria Kristiansson, AEquitas) (“When I was a prosecutor in Philadelphia, all prosecutors were offered the same training: a mandatory week-long orientation; mandatory weekly meetings, unless you missed them because you were in court which happened at least 50 percent of the time . . .”).
- 424 See, e.g., *Transcript of RSP Public Meeting 432* (Dec. 12, 2013) (testimony of Ms. Martha Bashford, New York County District Attorney’s Office) (“We provide ongoing substantive training. For our new people, we do the sexual assault laws, evidentiary rules specific to sex crimes. But we also continue to train our most senior people. We bring in outside speakers. We just did training on adolescent interview techniques.”).
- 425 See, e.g., *id.* at 456 (testimony of Ms. Kelly Higashi, U.S. Attorney’s Office for the District of Columbia) (“In my office, when you start out as a prosecutor, you’re required to spend your first few years going through various rotations, to develop different skills, and to learn how to investigate and prosecute different types of cases. Your training in the office usually starts out with a stint of between six and nine months in the appellate division. After that, you’re sent to one of the misdemeanor sections, and my section is one of

VI. TRAINING PROSECUTORS, DEFENSE COUNSEL, AND MILITARY JUDGES

witness preparation, how to conduct investigations and advise investigators, grand jury practice, how to handle pretrial and trial motions, and the handling of judge and jury trials as lead and assisting (second) counsel.⁴²⁶ Some prosecutors also train in the appellate section.⁴²⁷ Civilian prosecutors are able to gain substantial trial experience in this process.⁴²⁸ For instance, jury trial prosecutions for driving under the influence of alcohol or domestic violence can introduce newer prosecutors to working with experts, victims, and reluctant witnesses.⁴²⁹

Ongoing classroom-style instruction and focused continuing education courses occur in some jurisdictions through in-house training from senior attorneys.⁴³⁰ Prosecutors may also attend annual or topical seminars hosted by organizations such as the National District Attorneys' Association (NDAA) and AEquitas.⁴³¹ Some state agencies such as the National Association of Prosecutor Coordinators and the New York Prosecutors Training Institute also provide topical or annual training.⁴³²

Prosecutors seeking admission to sex crimes units in large jurisdictions typically must have five or more years of experience, and may be required to apply and interview concerning their experience, skill, and personal fit for the unit.⁴³³ Some civilian prosecutors identified turnover and burnout as challenges they face in seeking to build expertise and continuity through training and experience.⁴³⁴ To counteract this, some offices train their attorneys on vicarious trauma.

the misdemeanor sections.”).

426 See, e.g., *id.* at 432 (testimony of Ms. Martha Bashford, New York County District Attorney's Office); *id.* at 456–58 (testimony of Ms. Kelly Higashi, U.S. Attorney's Office for the District of Columbia).

427 *Id.* 456 (testimony of Ms. Kelly Higashi, U.S. Attorney's Office for the District of Columbia).

428 See, e.g., *id.* at 458 (testimony of Ms. Kelly Higashi, U.S. Attorney's Office for the District of Columbia, that prosecutors handling misdemeanor domestic violence and child abuse cases would prosecute about 30 bench (judge) misdemeanor trials before beginning misdemeanor sexual assault cases; in that role, they would prosecute another 15–20 misdemeanor sexual assault bench trials).

429 See, e.g., *id.* at 456–58 (testimony of Ms. Kelly Higashi, U.S. Attorney's Office for the District of Columbia, describing progression of prosecutors).

430 See, e.g., *Transcript of RSP Comparative Systems Subcommittee Meeting* 106, 142 (Jan. 7, 2014) (testimony of Ms. Candace Mosley, NDAA), see also *id.* at 124 (testimony of Ms. Viktoria Kristiansson, AEquitas).

431 See, e.g., *id.* at 94 (testimony of Ms. Candace Mosley, NDAA, describing topical courses provided to prosecutors); see also *id.* at 131–32 (testimony of Ms. Viktoria Kristiansson, AEquitas, describing training methods and options).

432 See, e.g., New York Prosecutors Training Institute, at <http://www.nypti.org/>; National Association of Prosecutor Coordinators, at <http://www.napc.us/>.

433 See, e.g., *Transcript of RSP Public Meeting* 432 (Dec. 12, 2013) (testimony of Ms. Martha Bashford, New York County District Attorney's Office) (“The very, very minimal amount of experience is three years, and normally our entry level is at five or six years of prosecuting statements. . . . I want to know how many statements you’ve taken from defendants, how many search warrants have you done, how many DNA cases have you put on, how many fingerprint experts have you put on, how many defendants have you cross-examined, how many jury trials have you had, how many judge trials you’ve had[.]”); see also *id.* at 460 (testimony of Ms. Kelly Higashi, U.S. Attorney's Office for the District of Columbia) (“Similar to what Martha just said, we have the same type of system where in order to get into that unit, people have to wait for a vacancy. They have to apply. We review their experience, we review their experience similar to what Martha said with DNA, with vulnerable victims.”).

434 See, e.g., *Minutes of RSP Comparative Systems Subcommittee Preparatory Session, Everett, WA* (Feb. 6, 2014) (discussing comments from local prosecutors regarding burnout) (on file at RSP); see also *Transcript of RSP Public Meeting* 468–69 (Dec. 12, 2013) (testimony of Ms. Kelly Higashi, U.S. Attorney's Office for the District of Columbia) (discussing efforts taken to prevent against “secondary trauma”).

3. Civilian Prosecutors' Offices Organization

Of the jurisdictions appearing before the Subcommittee, a majority have specialized units that prosecute sexual assault crimes.⁴³⁵ Smaller prosecution offices, which comprise the majority of jurisdictions in the United States, do not have specialized units but instead assign sexual assault cases to attorneys with specialized training.⁴³⁶ In several large jurisdictions, such as the New York boroughs, it is common for supervisors to work in the sex crimes bureau for twenty years or more.⁴³⁷ These attorneys develop extensive expertise that may be difficult to replicate. In contrast, in some jurisdictions such as Snohomish County, Washington, or Dover, Delaware, prosecutors rotate from one specialty unit to another on a cycle of approximately three years.⁴³⁸

4. National Training of Civilian Prosecutors

National training organizations, such as the NDAA and AEquitas, offer tailor-made courses and national training events.⁴³⁹ However, in recent years, after the NDAA withdrew from the National Advocacy Center (NAC), which also trains federal prosecutors, these courses are offered less frequently.⁴⁴⁰ Additionally, the NDAA could no longer afford scholarships or tuition reimbursement. Although the NDAA recently began offering similar courses in a training facility in Utah this year, funding still limits course availability.⁴⁴¹ Moreover, large caseloads and lack of attorney staffing in many offices may prevent civilian prosecutors from attending such training courses, even when offered for free or at discounted rates.⁴⁴² Likewise, civilian prosecutors identified challenges of funding, time, and receiving permission to attend.⁴⁴³

To address these challenges, organizations such as the NDAA and AEquitas have started conducting more on-site training courses and telephonic case consultations, and also producing webinar recordings.⁴⁴⁴ Currently, NDAA also focuses on responding to requests for assistance, and assisting prosecutors in their learning in

435 The jurisdictions from which prosecutors testified are: San Diego, CA; Manhattan, NY; Maricopa County, AZ; and Washington, DC. Additional information gathered covers 13 other jurisdictions listed *infra* in Appendix G, as well as civilian prosecutors Subcommittee members interviewed during site visits to: Fort Hood, Texas (Bell County, Texas District Attorney's Office); Quantico, VA (U.S. Attorney's Office, Eastern District of Virginia); and Everett, WA (Snohomish County, Washington District Attorney's Office).

436 See, e.g., *Transcript of RSP Comparative Systems Subcommittee Meeting* 95-96 (Jan. 7, 2014) (testimony of Ms. Candace Mosley, NDAA); see also Appendix G, *infra*.

437 See *id.*

438 See *id.*

439 See, e.g., *Transcript of RSP Comparative Systems Subcommittee Meeting* 94 (Jan. 7, 2014) (testimony of Ms. Candace Mosely, NDAA, describing topical courses provided to prosecutors); *id.* at 131-32 (testimony of Ms. Viktoria Kristiansson, AEquitas, describing training methods and options).

440 *Id.* at 111-12 (testimony of Ms. Candace Mosley, NDAA).

441 *Id.*; see also National District Attorneys Association, "All Upcoming Courses," at http://www.ndaa.org/upcoming_courses.html.

442 *Transcript of RSP Comparative Systems Subcommittee Meeting* 112 (Jan. 7, 2014) (testimony of Ms. Candace Mosley, NDAA); see also *id.* 124-25, 142-44 (testimony of Ms. Viktoria Kristiansson, AEquitas).

443 *Id.* at 106-07 (testimony of Ms. Candace Mosley, NDAA) ("I have had domestic violence conferences where I could give a full scholarship for transportation costs, lodging at the hotel, the conference was free, could reimburse some transportation. And I had people turn it down because they couldn't afford to be out of their offices."); see also *id.* at 124-25 (testimony of Ms. Viktoria Kristiansson, AEquitas, describing three challenges as "overwhelming caseloads"; "budget cuts"; and training conducted by people who are "not experts on adult learning principles and knowledgeable of the relevant sexual assault research").

444 *Id.* at 101 (testimony of Candace Mosley, NDAA); see also *id.* at 131-32, 134 (testimony of Ms. Viktoria Kristiansson, AEquitas); see also AEquitas, "Webinar Recordings," at <http://www.aequitasresource.org/webinar-recordings.cfm>.

VI. TRAINING PROSECUTORS, DEFENSE COUNSEL, AND MILITARY JUDGES

preparation for trials.⁴⁴⁵ Similarly, the NDAA maintains online courses and an online listserv to facilitate specialization and learning communities.⁴⁴⁶

5. Federal Sex Crimes Prosecution

State, rather than federal, prosecutors handle most violent crimes.⁴⁴⁷ In forty-eight Federal Judicial Districts, Department of Justice (DOJ) attorneys prosecute crimes that occur on Indian land.⁴⁴⁸ However, the total number of sexual assault cases that the DOJ prosecutes is a small fraction of the number of sexual assault cases nationwide.⁴⁴⁹ DOJ's NAC in Columbia, South Carolina⁴⁵⁰ trains DOJ attorneys on advocacy skills, legal administration, and substantive legal subjects, including violent crime (primarily on Indian Country).⁴⁵¹

6. Military Prosecutor Advanced/Specific Sexual Assault Training

"Our counsel are almost continuously in training. And I think it is critical that they stay in training. If those dollars are cut, that is where the damage is going to come from to any prosecution or any defense."⁴⁵²

Prosecuting and defending sexual assault crimes is a priority in all of the Military Services, and judge advocate training reflects this emphasis.⁴⁵³ Each Service focuses on teaching judge advocates to litigate adult sexual

445 *Transcript of RSP Comparative Systems Subcommittee Meeting 98* (Jan. 7, 2014) (testimony of Ms. Candace Mosley, NDAA).

446 *Id.* at 115.

447 For federal jurisdiction to apply, an offense must occur on a federal reservation, in a federal prison, or otherwise within the special maritime or territorial jurisdiction of the United States; otherwise, sexual offenses are state crimes. Sexual assaults prosecuted by the federal government are those that occur on Native American lands, military installations, national parks, and territorial property. The U.S. Attorney's Office for the District of Columbia is one exception, because its Superior Court Division prosecutes all crimes that occur in the District of Columbia, including all violent crime. That Division is akin to a typical district attorney's office. See, e.g., *Transcript of RSP Public Meeting 453* (Dec. 12, 2013) (testimony of Ms. Kelly Higashi, U.S. Attorney's Office for the District of Columbia).

448 Office of the United States Attorneys, "Federal Judicial Districts with Indian Country," at http://www.justice.gov/usao/briefing_room/ic/districts_listing.html.

449 See "Selected Sentencing Statistics for Fiscal Year 2012 for the Federal Sentencing Guidelines for Criminal Sexual Abuse (Rape) (\$2A3.1) and Abusive Sexual Contact (\$2A3.4)" (submitted Feb. 11, 2014 Mr. L. Russell Burrell) (listing FY 2012 federal conviction totals as 116 for rape and 121 for abusive sexual contact, as determined by the sentencing guidelines applied), *currently available* at http://responsesystemspanel.whs.mil/public/docs/meetings/Sub_Committee/20140211_CSS/Materials_Presenters/Burrell_Stats_FY2012_CrimSexAbuse_SexContact.pdf.

450 See Office of the United States Attorneys, "Office of Legal Education," at <http://www.justice.gov/usao/training/>. Training courses at the NAC rarely include state or local prosecutors.

451 Office of the United States Attorneys, National Advocacy Center, "Indian Country Basics Seminar," at <http://www.justice.gov/usao/training/training/descript.html#C000LE-IND-CS-20>; Office of the United States Attorneys, National Advocacy Center, "Investigating and Prosecuting Indian Country Domestic Violence and Sexual Assault Cases Seminar," at <http://www.justice.gov/usao/training/training/descript.html#C000LE-IND-CS-14>; Office of the United States Attorneys, National Advocacy Center, "Forensic Interviewing of Child and Adolescent Victims and Witnesses in Indian Country Cases Seminar," at <http://www.justice.gov/usao/training/training/descript.html#C000LE-IND-CS-28>.

452 *Transcript of RSP Comparative Systems Subcommittee Meeting 418* (Jan. 7, 2014) (testimony of Colonel Vance Speth, Director of Training and Readiness, U.S. Air Force).

453 See Services' Responses to Request for Information 1(d) (Nov. 1, 2013); Services' Responses to Request for Information 75(b) (Dec. 19, 2013); *Transcript of RSP Public Meeting 412-13* (Dec. 12, 2013) (testimony of Lieutenant Colonel Jay Morse, Chief, Trial Counsel

assault cases beginning in basic judge advocate training.⁴⁵⁴ In addition, the Services have created specialized programs for sexual assault prosecution and training, such as: the Army's SVP program; the use of civilian HQEs in the Army, Navy, and Marine Corps; the Air Force's Special Victims Unit (SVU); and the Navy's MJLCT.⁴⁵⁵

Federal sequestration in 2013 affected the training budget of military counsel, which resulted in cancellation of some training courses.⁴⁵⁶ However, it is imperative to maintain emphasis on training counsel to handle complex cases, given turnover and personnel rotations of the military.⁴⁵⁷

Furthermore, the Services ensure experienced senior attorneys, with extensive training and trial experience, supervise military prosecutors and defense counsel handling adult sexual assault cases in all Services.⁴⁵⁸ The Services also ensure military prosecutors and defense counsel have smaller caseloads than their civilian counterparts to enable sufficient preparation time for trials.⁴⁵⁹

Assistance Program (TCAP), U.S. Army); *id.* at 404-08 (testimony of Colonel Don Christensen, U.S. Air Force); *id.* at 304-09 (testimony of Commander Don King, U.S. Navy); *id.* at 427-30 (testimony of Major Mark Sameit, U.S. Marine Corps); CAAF FY13 ANNUAL REPORT, *supra* note 397, at 34 (Annual Report of The Judge Advocate General of the Army) ("Except for the G0LO course, which is provided individually to General Officers, all courses are taught using a sexual assault fact pattern and are synchronized with other JAGC training agencies."); *id.* at 57, 58, 68-72, 75-77, 79-80 (Annual Report of the Judge Advocate General of the Navy); *id.* at 118-119, 123-129 (Annual Report of The Judge Advocate General of the Air Force); *id.* at 104-05 (U.S. Marine Corps Annual Military Justice Report); *id.* at 140-41 (Annual Report of the Judge Advocate General of the Coast Guard).

454 See Services' Responses to Request for Information 1(d) (Nov. 1, 2013).

455 *Id.*

456 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 65 (Annual Report of the Judge Advocate General of the Navy); see also, e.g., *id.* at 57 ("[D]ue to Congressional Continuing Resolutions, Service restrictions on conference attendance, and sequestration, external funding from DoD did not materialize. As a result, some planned military justice courses were curtailed and others were offered online in lieu of in-person training."); *id.* at 126 (Report of The Judge Advocate General of the Air Force) ("Travel and Reservist man-day restrictions, which were the result of ongoing sequestration of appropriations during much of FY2013, required cancellation of scheduled TRIALS programs at Los Angeles AFB, CA; Atlanta, GA; MacDill AFB, FL; and Joint Base Langley-Eustis, VA. Aside from the cancelled TRIALS programs, sequestration also caused cancellation of other FY2013 courses devoted, at least in part, to instruction in military justice. These were the Joint Military Judges Annual Training (previously known as the Inter-Service Military Judges Seminar), the Annual Survey of the Law (for Reserve and Air National Guard judge advocates), one offering of GATEWAY, and several offerings of the Intermediate Sexual Assault Litigation Course.").

457 See, e.g., *Transcript of RSP Comparative Systems Subcommittee Meeting 209-10* (Jan. 7, 2014) (testimony of Ms. Lisa Wayne, former President, National Association of Criminal Defense Lawyers (NACDL), comparing sexual assault cases to other cases and describing them as being "as complicated as any white collar case that I have"); see also *Transcript of RSP Public Meeting 353-60* (Dec. 12, 2013) (testimony of Ms. Laurie Rose Kepros, Director of Sexual Litigation, Colorado Office of the State Public Defender, describing complexity of sexual assault cases and importance of having experienced counsel defend them); *id.* at 432 (testimony of Ms. Martha Bashford, New York County District Attorney's Office) ("The very, very minimal amount of experience is three years, and normally our entry level is at five or six years of prosecuting statements.").

458 Army's Response to Request for Information 75(b) (Dec. 19, 2013) ("Staff Judge Advocates are entrusted with the responsibility for ensuring that any trial counsel assigned to any case, whether sexual assault or another offense, are qualified to do so. Technical supervision and oversight is provided to trial counsel through a Senior Trial Counsel, Chief of Justice, Deputy Staff Judge Advocate and reach back expertise from the Trial Counsel Assistance Program[.]"); Air Force's Response to Request for Information 75(b) (Dec. 19, 2013) (describing certification process and noting that only certified judge advocates may be detailed even to non-penetrative sexual assault cases); Navy's Response to Request for Information 75(b) (Dec. 19, 2013) (stating that all trial counsel assigned sexual assault cases are supervised by Senior Trial Counsel (judge advocates with a rank of O-4 or above), and the cases are typically detailed only to "core attorneys"—i.e., judge advocates with at least one full tour of experience); Marine Corps' Response to Request for Information 75(b) (Dec. 19, 2013) (stating that only Special Victim Qualified Trial Counsel are detailed to sexual assault cases).

459 See Services' Responses to Request for Information 75(b) (Dec. 19, 2013); see also Services' Responses to Request for Information

However, despite significant efforts by the Services to train and prepare practitioners, a continuing challenge throughout the Services is the ability to build and retain specialized litigation experience for military prosecutors and defense counsel.⁴⁶⁰ This pertains specifically to adult sexual assault cases, which experienced attorneys characterized as among the most complex cases.⁴⁶¹ For example, while training, supervision, and caseloads address most experience challenges, the Subcommittee received information from two witnesses about a lack of experienced defense counsel in the Marine Corps.⁴⁶²

As discussed below, the Services have attempted to overcome litigation experience challenges through a combination of training and supervision. Additionally, the Navy's Military Justice Litigation Career Track specifically seeks to build corporate litigation expertise and experience in the Military.

a. Army

Trial Counsel Assistance Program and Highly Qualified Experts

The Army's Trial Counsel Assistance Program (TCAP), created in 1982, which oversees training for all Army trial counsel, is composed of five O-3 (captain) training officers; an O-5 (lieutenant colonel) deputy; a lieutenant colonel chief; and two HQEs, civilians with more than 30 years of combined prosecution experience between them.⁴⁶³ The Chief of TCAP also supervises the Army's 23 SVPs, who focus specifically on prosecuting cases involving adult sexual assault, domestic violence, and those cases where children are victims.⁴⁶⁴

TCAP provides litigation instruction to judge advocates newly appointed as trial counsel.⁴⁶⁵ Within the first six months of assuming duties, trial counsel attend the five-day "new prosecutor" course.⁴⁶⁶ The first two-and-a-half days cover basic prosecution, and the latter half, called Essential Strategies for Sexual Assault Prosecution, focuses on the nuanced aspects of prosecuting sexual assault.⁴⁶⁷ TCAP's training regime, with the Army's Legal Center and School providing the instruction, aims 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), SVPs, deputy SJAs, and SJAs.⁴⁶⁸

145 (Apr. 14, 2014).

460 See, e.g., *Transcript of RSP Public Meeting 407* (Dec. 12, 2013) (testimony of Colonel Don Christensen, U.S. Air Force, describing Air Force's consideration of career track "so that we can get more litigation experience").

461 See, e.g., *id.* at 209-10 (testimony of Ms. Lisa Wayne, NACDL).

462 See *Transcript of RSP Comparative Systems Subcommittee Meeting 426* (Jan. 7, 2014) (testimony of Ms. Kate Coyne, Highly Qualified Expert and Deputy Public Defender, San Diego County); *Transcript of RSP Public Meeting 321* (Dec. 12, 2013) (testimony of Captain Scott (Russ) Shinn, U.S. Marine Corps).

463 *Transcript of RSP Public Meeting 412* (Dec. 12, 2013) (testimony of Lieutenant Colonel Jay Morse, Chief, TCAP, U.S. Army).

464 *Id.*

465 *Id.*; see also Army's Response to Request for Information 1(d) (Nov. 1, 2013); Army's Response to Request for Information 75(b) and (c) (Dec. 19, 2013).

466 *Transcript of RSP Public Meeting 412* (Dec. 12, 2013) (testimony of Lieutenant Colonel Jay Morse, Chief, TCAP, U.S. Army).

467 *Id.*

468 *Id.* at 412-14.

TCAP also provides ongoing assistance throughout a prosecutor's tenure via a 24-hour-a-day, 7-day-a-week help line, and by offering training opportunities on site and at the JAG School throughout the year.⁴⁶⁹ Additionally, TCAP provides in-depth training to individual trial counsel and assistance with specific cases, and occasionally details a trial counsel to a specific case at the request of a local SJA.⁴⁷⁰ Further, TCAP regularly brings in experts from the civilian community (HQEs) as part of its overall plan to build on the experience of the individual attorney and the expertise found throughout the JAG Corps.⁴⁷¹

Army Special Victim Prosecutor Program and Training

"[P]reventing sexual assault and domestic violence and prosecuting these complex crimes, whether they occur in the civilian or in the military community, is a difficult task requiring time, resources and expertise[;] but the SVP Program has proven over the last four years to be a significant step towards success."⁴⁷²

In 2009, the Army created the SVP program.⁴⁷³ The SVPs' primary mission is to develop and litigate special victim cases within their geographic area of responsibility.⁴⁷⁴ SVPs are individually selected from the Army's most experienced trial lawyers based on demonstrated court-martial experience, experience with sexual assault and special victim cases, general expertise in criminal law, and interpersonal skill in handling sensitive victim cases.⁴⁷⁵ Although both prosecution and defense experience is not required for selection, it is preferred.⁴⁷⁶ The 23 SVPs distributed across the Army serve both their installation and their geographic area of responsibility, and are typically assigned to their position for three years.⁴⁷⁷

In addition to the criminal law training that all Army JAGs receive at The Judge Advocate General's School, SVPs undergo specialized training at military and civilian courses, and spend two weeks with a civilian district attorney's office observing how civilian sexual assault units function.⁴⁷⁸ SVPs also receive specialized training on care and interviewing techniques for special victims.⁴⁷⁹ The secondary mission of SVPs is to develop sexual

469 *Id.* at 413. The Army's JAG School is located in Charlottesville, VA. See U.S. Dep't of the Army, "JAGCNet," at <https://www.jagcnet.army.mil/>.

470 *Transcript of RSP Public Meeting* 413 (Dec. 12, 2013) (testimony of Lieutenant Colonel Jay Morse, Chief, TCAP, U.S. Army).

471 *Id.* at 414.

472 *Id.* at 421-22.

473 *Id.* at 414; Army's Response to Request for Information 1(d) (Nov. 1, 2013); Army's Response to Request for Information 75(b) and (c) (Dec. 19, 2013).

474 Army's Response to Request for Information 1(d) (Nov. 1, 2013); Army's Response to Request for Information 75(b) and (c) (Dec. 19, 2013).

475 *Transcript of RSP Public Meeting* 414, 416 (Dec. 12, 2013) (testimony of Lieutenant Colonel Jay Morse, Chief, TCAP, U.S. Army); see also Army's Response to Request for Information 1(d) (Nov. 1, 2013); Army's Response to Request for Information 75(b) and (c) (Dec. 19, 2013).

476 Army's Response to Request for Information 75(c) (Dec. 19, 2013).

477 Army's Response to Request for Information 1(d) (Nov. 1, 2013). Of the current 23 SVPs, two are lieutenant colonels, 10 are majors, and 11 are senior captains. Army's Response to Request for Information 75(c) (Nov. 1, 2013).

478 *Transcript of RSP Comparative Systems Subcommittee Meeting* 295-96 (Jan. 7, 2014) (testimony of Lieutenant Colonel Matthew Calarco, U.S. Army).

479 *Transcript of RSP Public Meeting* 414-22 (Dec. 12, 2013) (testimony of Lieutenant Colonel Jay Morse, Chief, TCAP, U.S. Army).

assault and family violence training programs for investigators and trial counsel in their area of responsibility using local, state, and federal resources in conjunction with information TCAP and the Army JAG School provide.⁴⁸⁰

Additional Skill Identifier Program

The Army designed the Additional Skill Identifier (ASI) Program to help identify and sustain military justice expertise and to assist in the selection of personnel for key military justice positions.⁴⁸¹ Under this program, judge advocates are awarded varying degrees of military justice skill identifiers depending on their level of expertise.⁴⁸² The Army instituted the ASI program for military justice in 2008 and revised it in 2011.⁴⁸³

b. Air Force Special Victims Unit Program and Training⁴⁸⁴

Senior Trial Counsel (STC), the Air Force's senior level prosecutors, litigate the Air Force's most difficult cases, including the vast majority of sexual-assault prosecutions.⁴⁸⁵ Judge Advocates selected to serve as STC typically have at least three years of experience.⁴⁸⁶ A subset of STC are members of the Special Victims Unit (SVU-STC), who specialize in the prosecution of sexual assault and family violence cases.⁴⁸⁷

Since the SVU-STC's establishment in April of 2012, the Air Force has seen a 75 percent conviction rate in Article 120 cases.⁴⁸⁸ Colonel Don Christensen, head of the Air Force SVU, testified:

My special victim unit is made up of ten very dedicated prosecutors who have demonstrated that they have the ability to try our toughest cases. All of them have come from at least one assignment prior to becoming special victims' prosecutors. And once they become a senior trial counsel, they have to demonstrate that they can excel for at least a year before they're entitled to become special victims' prosecutors.⁴⁸⁹

480 *Id.*

481 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 69 (Annual Report of the Judge Advocate General of the Navy); Army's Response to Request for Information 1(d) (Nov. 1, 2013); Army's Response to Request for Information 1(d) (Nov. 1, 2013); Army's Response to Request for Information 75(b) and (c) (Dec. 19, 2013).

482 To date, the Army has awarded skill identifiers to 1005 judge advocates: 558 basic, 226 senior, 145 experts, and 76 master skill. CAAF FY13 ANNUAL REPORT, *supra* note 397, at 69 (Annual Report of the Judge Advocate General of the Navy); Army's Response to Request for Information 1(d) (Nov. 1, 2013); Army's Response to Request for Information 75(b) and (c) (Dec. 19, 2013).

483 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 69 (Annual Report of the Judge Advocate General of the Navy); Army's Response to Request for Information 1(d) (Nov. 1, 2013); Army's Response to Request for Information 1(d) (Nov. 1, 2013); Army's Response to Request for Information 75(b) and (c) (Dec. 19, 2013).

484 Air Force's Response to Request for Information 1(d) (Nov. 1, 2013).

485 Air Force's Response to Request for Information 75(c) (Dec. 19, 2013).

486 Air Force's Response to Request for Information 1(d) (Nov. 1, 2013); Air Force's Response to Request for Information 75(c) (Dec. 19, 2013).

487 *Transcript of RSP Public Meeting 404-08* (Dec. 12, 2013) (testimony of Colonel Don Christensen, U.S. Air Force).

488 *Id.* at 404-05.

489 *Id.* at 406.

After the basic JAG training course, Air Force lawyers selected for litigation positions attend the Trial and Defense Advocacy Course (TDAC) and the Advanced Trial Advocacy Course (ATAC).⁴⁹⁰ The Advanced Sexual Assault Litigation Course (ASALC), implemented in 2013, incorporates material focused on sexual assault, domestic violence, and child abuse.⁴⁹¹ All SVU-STC attend this course annually.⁴⁹² SVU JAGs also continuously attend various advanced training courses.⁴⁹³

c. Navy

"The training of effective litigators takes both actual training and experience. We are a young law firm. ... [J]ust by the nature of our businesses we'll always be on the short end when it comes to experience. We make up for that in training. We probably do more training than any other group of lawyers on the planet."⁴⁹⁴

Military Justice Litigation Career Track (MJLCT)

Recommendation 24: The Service TJAGs and the Staff Judge Advocate to the Commandant of the Marine Corps study the Navy's Military Justice Litigation Career Track (MJLCT) 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.

Finding 24-1: 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 Military Services all use a combination of experienced supervising attorneys, systematic sexual assault training, and smaller caseloads to address experience disparities. Additionally, the Navy has developed the MJLCT for its attorneys.

Discussion

The Navy's Military Justice Litigation Career Track (MJLCT) provides a structure for developing and maintaining a cadre of judge advocates who specialize in court-martial litigation.⁴⁹⁵ Judge advocates who exhibit both an aptitude and a desire to further specialize in litigation may apply for inclusion in the MJLCT.⁴⁹⁶ Once selected, MJLCT officers spend most of their career in litigation-related billets as trial counsel, defense

490 Air Force's Response to Request for Information 75(c) (Dec. 19, 2013).

491 Air Force's Response to Request for Information 1(d) (Nov. 1, 2013); Air Force's Response to Request for Information 75(c) (Dec. 19, 2013).

492 *Id.*

493 See Air Force's Response to Request for Information 1(d) (Nov. 1, 2013). These courses include Trial and Defense Advocacy (Air Force); Advanced Trial Advocacy (Air Force); Advanced Sexual Assault Litigation (Air Force); Prosecuting Complex Cases (Navy); Intermediate Trial Advocacy (Department of Justice); Criminal Law Advocacy Course/Prosecuting Sexual Assaults (Army); Special Victims Unit Course (Army); Sex Crimes Investigation Training Program (Air Force); Prosecuting Alcohol-Fueled Sexual Assaults (Navy); and National District Attorneys Association Sexual Assault Prosecution. *Id.*

494 *Transcript of RSP Public Meeting 423* (Dec. 12, 2013) (testimony of Commander Aaron Rugh, U.S. Navy).

495 Navy's Response to Request for Information 1(d) (Nov. 1, 2013); Navy's Response to Request for Information 75(c) (Dec. 19, 2013).

496 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 77-78 (Annual Report of the Judge Advocate General of the Navy).

VI. TRAINING PROSECUTORS, DEFENSE COUNSEL, AND MILITARY JUDGES

counsel, and military judges.⁴⁹⁷ In the course of a typical military career, a MJLCT officer will advance from Specialist I to Specialist II to Expert.⁴⁹⁸ 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.⁴⁹⁹ These officers are then required to complete a follow-on tour in a courtroom intensive billet with leadership requirements.⁵⁰⁰

The general MJLCT career progression is as follows.⁵⁰¹

Table 9

| Designation | Years of Experience | Time Limit to Advance (Years) | Members (jury) Trials Completed |
|---------------|---------------------|-------------------------------|---------------------------------|
| Specialist I | 4 | N/A | 5 |
| Specialist II | 10 | 7 | 10 |
| Expert | 16 | 7 | 20 |

Navy Trial Counsel Assistance Program and Highly Qualified Experts

TCAP oversees training for Navy trial counsel.⁵⁰² It provides on scene and online training to prosecutors in a variety of specialized areas and then monitors effective training completion to ensure world-wide capability in a variety of court-martial skills.⁵⁰³ TCAP conducts annual mobile training; installation site-visits with training sections on special victim crimes and process inspection; live online training; and interactive web-based training (sponsored by TCAP and conducted by subject matter experts).⁵⁰⁴ TCAP also inspects and critiques local training plans to ensure senior prosecutors have developed a robust weekly or bi-weekly training program for junior litigators.⁵⁰⁵

497 *Id.*

498 *Id.*

499 Navy's Response to Request for Information 1(d) (Nov. 1, 2013); Navy's Response to Request for Information 75(c) (Dec. 19, 2013).

500 *Id.*

501 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 77-78 (Annual Report of the Judge Advocate General of the Navy); see also Navy's Response to Request for Information 1(d) (Nov. 1, 2013); Navy's Response to Request for Information 75(c) (Dec. 19, 2013).

502 *Id.*

503 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 69 (Annual Report of the Judge Advocate General of the Navy).

504 Navy's Response to Request for Information 1(d) (Nov. 1, 2013).

505 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 70-71 (Annual Report of the Judge Advocate General of the Navy).

The Navy relies on its STC and TCAP to supervise sexual assault prosecutions.⁵⁰⁶ Eight of nine STC and all uniformed TCAP personnel are members of the MJLCT.⁵⁰⁷ Five of nine STC have received their LL.M. in litigation or trial advocacy from a civilian law school.⁵⁰⁸

To further refine the JAG Corps' litigation capabilities, in 2012 the Navy established an externship program and assigned two mid-level career officers to work in the sex crimes units in the Office of the State Attorney in Jacksonville, Florida, and the San Diego District Attorney's Office in San Diego, California.⁵⁰⁹ These six-week clinical training externships enable officers to gain practical experience and insight into how civilian prosecutors' offices manage a high volume of sexual assault cases.⁵¹⁰

In May 2013, the Navy hired an HQE to work with TCAP.⁵¹¹ The HQE has 17 years of experience as a prosecutor and as an instructor and course coordinator for the NDAA.⁵¹²

d. Marine Corps⁵¹³

Force Restructuring and Trial Counsel Requirements

In 2012, the Marine Corps entirely restructured its criminal justice offices by creating Complex Trial Teams (CTT) to oversee sexual assault prosecutions, consult with prosecutors on complex cases, and develop training programs (in conjunction with TCAP).⁵¹⁴ Only trial counsel certified as Special Victim Qualified Trial Counsel (SVTC) may be assigned sexual assault cases in the Marine Corps.⁵¹⁵ To qualify for certification as an SVTC, a judge advocate must: (1) be a General Court-Martial Qualified trial counsel; (2) receive a written recommendation from the Regional Trial Counsel that the judge advocate possesses the requisite expertise to try a special victim case; (3) demonstrate to the satisfaction of an O-6 level Legal Services Support Section Officer-in-Charge that the judge advocate possesses the requisite expertise, experience, education, innate ability, and disposition to competently try special victim cases; (4) prosecute a contested special or general court-martial in a special victim case as an assistant trial counsel; and (5) attend an intermediate-level trial advocacy training course for the prosecution of special victim cases.⁵¹⁶

506 Navy's Response to Request for Information 1(d) (Nov. 1, 2013). According to the Navy's Response to this RFI, as of December 2013, all STCs, all TCAP personnel, and a majority of trial counsel had successfully completed the Army Special Victims Unit Investigations Course (an intensive two-week course exploring the neurobiology of sexual trauma and focusing on investigative techniques unique to these cases). All STCs and a large majority of trial counsel had also attended Prosecuting Alcohol Facilitated Sexual Assaults (PAFSA) and all prosecution offices had completed a nine-hour online course of lectures on special victims' offenses by the end of January 2014. *Id.*

507 *Id.*

508 *Id.*

509 *Id.*; Navy's Response to Request for Information 75(c) (Dec. 19, 2013).

510 *Id.*

511 *Id.*; CAAF FY13 ANNUAL REPORT, *supra* note 397, at 69 (Annual Report of the Judge Advocate General of the Navy).

512 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 69 (Annual Report of the Judge Advocate General of the Navy).

513 Marine Corps' Response to Request for Information 1(d) (Nov. 1, 2013).

514 *Id.*

515 *Id.*

516 *Id.*

Marine Corps Trial Counsel Assistance Program

Since 2010, the Marine Corps has relied on TCAP to provide training to trial counsel.⁵¹⁷ Marine Corps TCAP frequently answers questions from prosecutors in the field, and also maintains a website for trial counsel to share motions and best practices throughout the Marine Corps.⁵¹⁸ TCAP's secondary mission is to conduct training, which it does in conjunction with Navy TCAP.⁵¹⁹ Every Marine trial counsel goes through a prosecuting sexual assault course that includes a mix of experts on subjects such as toxicology, DNA, and forensic psychology.⁵²⁰ In addition, because the Marine Corps has rapid turnover, regional trial counsel and the senior trial counsel instruct courses to ensure that trial counsel are implementing best practices.⁵²¹ TCAP also conducts monthly conference calls with regional trial counsel to discuss and disseminate best practices.⁵²² As with the other Services, TCAP works with NDAA and the TCAPs of fellow Services to locate and distribute best practices.⁵²³

Marine Corps Highly Qualified Experts

The Marine Corps recently hired three HQEs to assist in all sexual assault cases; two are assigned to the prosecution.⁵²⁴ The primary job of the HQEs is to train trial counsel to prosecute sexual assault cases.⁵²⁵ Trial counsel must consult with their regional HQE within ten days of being detailed to any sexual assault case.⁵²⁶ In addition to attending training conducted by the HQEs, every trial counsel attends a week-long intensive training course on prosecuting sexual assault cases coordinated by the Marine Corps TCAP, and quarterly training provided by the Regional Trial Counsel.⁵²⁷

e. Coast Guard

“We rely very heavily on the Navy and the Army Trial Counsel Assistance Program to assist our folks. But one of the big challenges that we face is experience. When you only put on 11 trials, Service-wide, in a year, you’re not going to have very many people with an extensive amount of trial experience.”⁵²⁸

Through a long-standing Memorandum of Understanding with the Navy, Coast Guard judge advocates gain trial experience through assignment to Navy offices around the country.⁵²⁹ Over the last eight years, Coast

517 *Id.*

518 *Transcript of RSP Public Meeting 427-30* (Dec. 12, 2013) (testimony of Major Mark Sameit, U.S. Marine Corps).

519 *Id.*

520 *Id.*

521 *Id.*

522 *Id.*

523 *Id.*

524 Marine Corps' Response to Request for Information 1(d) (Nov. 1, 2013).

525 *Id.*; *Transcript of RSP Public Meeting 427-30* (Dec. 12, 2013) (testimony of Major Mark Sameit, U.S. Marine Corps).

526 Marine Corps' Response to Request for Information 1(d) (Nov. 1, 2013).

527 The Marine Corps has requested an additional HQE for TCAP. See CAAF FY13 ANNUAL REPORT, *supra* note 397, at 108-09 (Marine Corps Annual Military Justice Report for Fiscal Year 2013).

528 *Transcript of RSP Public Meeting 409-10* (Dec. 12, 2013) (testimony of Captain Stephen McCleary, U.S. Coast Guard).

529 Coast Guard's Response to Request for Information 1(d) (Nov. 1, 2013).

Guard judge advocates gained experience as prosecutors with the Marine Corps at Marine Corps Base Quantico, Camp Lejeune, and Camp Pendleton.⁵³⁰ The Coast Guard also has close working relationships with the Army and Navy TCAPs.⁵³¹ Beginning in FY 2013, Coast Guard Judge Advocates began attending the Army's Special Victim Investigator Unit course.⁵³² In addition, two Coast Guard judge advocates completed the Prosecuting Alcohol Facilitated Sexual Assault Cases course at the Naval Justice School in FY 2013.⁵³³

C. TRAINING FOR CIVILIAN AND MILITARY DEFENSE COUNSEL

Recommendation 25: The Secretaries of the Military Services direct that current training efforts and programs be sustained to ensure that military defense counsel are competent, prepared, and equipped.

Finding 25-1: Defense counsel handling adult sexual assault cases in all the Military Services receive specialized training.

1. Overview of Defense Counsel Training Assessment and Comparison

In assessing training and experience levels of military defense counsel, the Subcommittee compared civilian approaches and examined best and promising practices. Based on comments of experienced civilian counsel, the Subcommittee paid particular attention to the minimum level of experience necessary to competently represent those accused of sexual assault crimes.⁵³⁴ Given the complexity of these cases and potential consequences resulting from conviction, including sex offender registration, the Subcommittee determined that a best practice in defending those accused of adult sexual assault crimes is to require some litigation experience.

530 *Id.*

531 *Id.*

532 *Id.*

533 *Id.*

534 See, e.g., *Transcript of RSP Public Meeting 362* (Dec. 12, 2013) (testimony of Ms. Amy Muth, The Law Office of Amy Muth); *id.* at 372 (testimony of Mr. Barry G. Porter, Attorney and Statewide Trainer, New Mexico Public Defender Department); see also *id.* at 353-60 (testimony of Ms. Laurie Rose Kepros, Colorado Office of the State Public Defender, describing complexity of sexual assault cases and importance of having experienced counsel defend them).

2. Civilian Defense Counsel Training and Experience

There are no minimum training or experience criteria, nationally or within most states, for counsel defending sex crimes.⁵³⁵ Classroom and course training varies widely, and is limited by funding.⁵³⁶ Training often occurs during supervised experience with client interactions, pretrial motions, and trial work.⁵³⁷

As with civilian prosecutor training, sustained defense counsel training occurs on the job, with in-house seminars or through supervisor mentoring.⁵³⁸ Intensive defense counsel training for specialized topics such as DNA and forensics is usually offered in smaller groups of 20 or 30 lawyers.⁵³⁹ Some topics identified as necessary for effective civilian defense counsel training include: forensics, including integrity of evidence, chain of custody, and misidentification; drug and alcohol effects on perception and memory; and mental health issues.⁵⁴⁰

Public defenders handling adult sexual assault crimes generally have at least three years of experience, and often more than five.⁵⁴¹ However, defense counsel in private practice tend to have more experience handling adult sexual assault cases because some choose to specialize in this area.⁵⁴² Public defender offices are often not organized into specialized sex crimes units.⁵⁴³ Thus, many experienced defense counsel handle various types of crimes. Caseloads for defense counsel vary, but are often not as large as those of civilian prosecutors. Most defense counsel have caseloads of about 10-30 cases.⁵⁴⁴

535 In the state of Washington, for example, the minimum qualifications to do public defense contract work for sex crimes are to be a lawyer for one year and have done at least one felony trial and another trial with the assistance of another attorney. *Transcript of RSP Public Meeting* 362 (Dec. 12, 2013) (testimony of Ms. Amy Muth, The Law Office of Amy Muth).

536 See, e.g., *Transcript of RSP Comparative Systems Subcommittee Meeting* 267 (Jan. 7, 2014) (testimony of Ms. Lisa Wayne, former President, NACDL, and Training Director of Colorado State Public Defender System, discussing funding and pay differences between prosecutors and defense counsel) ("We [Colorado] are well-funded because it is a state system. So, it is dictated geographically. It is dictated by county. If you go to the south, the disparity is incredible. In the federal system, it is pretty equal in terms of the federal defenders and the United States Attorney office. And so, really, it is dictated geographically. If you are in a rich jurisdiction, you have pretty equal funding. If you are in a poor county or a rural county, it is not at all.").

537 See, e.g., *id.* at 203, 261-64 (testimony of Ms. Yvonne Younis, Defender's Association of Philadelphia).

538 *Id.* at 203 ("[M]ost of my training is very one-on-one or small group training within the office[.]").

539 *Id.* at 210-14 (testimony of Ms. Lisa Wayne, NACDL and Colorado State Public Defender System).

540 *Id.* at 210-14, 258-59.

541 See, e.g., *Transcript of RSP Public Meeting* 372 (Dec. 12, 2013) (testimony of Mr. Barry G. Porter, New Mexico Public Defender Department, stating that, after 20 years of experience, he believes that attorneys should not be defending sexual assault cases until they have at least three years of experience, and should do them alone only after at least five years).

542 See, e.g., *Transcript of RSP Comparative Systems Subcommittee Meeting* 199-200 (Jan. 7, 2014) (testimony of Ms. Lisa Wayne, NACDL and Colorado State Public Defender System).

543 See, e.g., *Transcript of RSP Public Meeting* 378-80 (Dec. 12, 2013) (testimony of Mr. James Whitehead, Supervising Attorney, Trial Division, Public Defender Service for the District of Columbia); *id.* at 336-37 (testimony of Mr. Lane Borg, Executive Director, Metropolitan Public Defenders, Portland, Oregon); *id.* at 375-76 (testimony of Mr. Barry G. Porter, New Mexico Public Defender Department); see also *Transcript of RSP Comparative Systems Subcommittee Meeting* 201-02 (Jan. 7, 2014) (testimony of Ms. Yvonne Younis, Defender's Association of Philadelphia).

544 See, e.g., *Transcript of RSP Comparative Systems Subcommittee Meeting* 411 (Jan. 7, 2014) (testimony of Mr. Neal Puckett, Highly Qualified Expert, Defense Counsel Assistance Program, U.S. Navy); Services' Responses to Request for Information 145(c) (Apr. 11, 2014).

3. Civilian Defense Counsel Training Schools

Although some national defense organizations are not as large or well-funded as those of the prosecution, a number of training schools exist. The National Association of Criminal Defense Lawyers (NACDL) is a professional defense association that sponsors training and continuing legal education courses, and provides legal education publications and webcasts.⁵⁴⁵ Likewise, the National Legal Aid and Defenders Association (NLADA) offers training courses for defense counsel.⁵⁴⁶ The National Criminal Defense College (NCDC) is a not-for-profit corporation in Macon, Georgia that conducts seminars and training sessions for criminal defense lawyers.⁵⁴⁷ The Trial Lawyers College is a training school for defense counsel, with courses focusing on topics such as death penalty defense, trial practice, and the components of advocacy.⁵⁴⁸

Some states have organized group training for their attorneys.⁵⁴⁹ For instance, the New York State Defender Association (NYSDA) Defender Institute offers an annual intensive trial advocacy course.⁵⁵⁰ Likewise, the Oregon Criminal Defense Lawyers Association (OCDLA) provides CLE training for defense attorneys.⁵⁵¹ Similarly, the California Public Defender Association (CPDA) offers annual courses in basic and intermediate trial advocacy.⁵⁵²

4. Advanced Training of Military Defense Counsel

"The backdrop of this, in terms of what we think is good training and best practices, I have to be very honest that I think that the military does a lot right. And the scrutiny that has come upon the military, in many ways, is politically driven and not really based in fact."⁵⁵³

a. Training for Army Defense Counsel Handling Adult Sexual Assault Cases

Established in 2007, Army DCAP is staffed by five experienced trial practitioners, military and civilian, including two civilian HQEs.⁵⁵⁴ DCAP provides training, resources and assistance for defense counsel worldwide.⁵⁵⁵ Both HQEs are former military judges and experienced trial practitioners with over 40 years of combined military justice experience.⁵⁵⁶

545 NACDL, at <http://www.nacdl.org/>.

546 NLADA, at <http://www.nlada100years.org/>.

547 NCDC, at <http://www.ncdc.net/>. It has courses covering trial practice skills. Each year, the NCDC presents two sessions of the summer Trial Practice Institute on the campus of Mercer Law School in Macon, Georgia. The Institute also holds seminars on specialized topics at other times of the year and in other locations. *Id.*

548 The Trial Lawyers College, at <http://www.triallawyerscollege.org/AboutTLC.aspx>.

549 See, e.g., Virginia Indigent Defense Commission, at <http://www.indigentdefense.virginia.gov/training.htm>. Once a year, the Virginia Commission convenes a Public Defender Conference that provides six hours of training, including one hour of legal ethics. *Id.*

550 See NYSDA, "Upcoming NYSDA Defender Institute Training Events," at <http://www.nysda.org/index-5.html>.

551 See OCDLA, "Continuing Legal Education Seminars," at <http://www.ocdla.org/seminars/shop-seminar-index.shtml>.

552 See CPDA, at <http://www.claraweb.us/>.

553 *Transcript of RSP Comparative Systems Subcommittee Meeting* (Jan. 7, 2014) (testimony of Ms. Lisa Wayne, NACDL and Colorado State Public Defender System).

554 *Id.* at 310.

555 *Id.* at 310-11.

556 *Id.* at 311.

VI. TRAINING PROSECUTORS, DEFENSE COUNSEL, AND MILITARY JUDGES

“DCAP is available around the clock for case consultation. During Fiscal Year 2013, DCAP received over 2,000 inquiries from defense counsel in the form of emails, phone calls and in-person inquiries during training events.”⁵⁵⁷

The majority of defense counsel come to Trial Defense Services (TDS), the organization to which all defense counsel are assigned, with prior military justice experience, including time in the courtroom.⁵⁵⁸ At a minimum, they are graduates of the JAOBC, where they have been trained to serve as the second chair in all phases of a court-martial.⁵⁵⁹ Once assigned to TDS, defense counsel undergo further training from introductory courses such as Defense Counsel 101 and advanced trial advocacy courses such as the Sexual Assault Training Advocacy Course.⁵⁶⁰

Besides formal training, supervisory defense counsel continuously monitor the training status of each defense counsel and adjust based on individual development.⁵⁶¹ In addition, defense counsel routinely “reach back” to DCAP for advice on individual cases.⁵⁶²

b. Training for Air Force Defense Counsel Handling Adult Sexual Assault Cases⁵⁶³

The Air Force criminal defense network is broadly divided into three regions worldwide.⁵⁶⁴ In total, there are 187 attorneys and paralegals assigned, serving at 69 operating locations worldwide with 85 area defense counsel (base level counsel) and 19 senior defense counsel.⁵⁶⁵

Most base offices have only one defense counsel and one paralegal assigned, and are responsible for defense services at that installation.⁵⁶⁶ The Air Force is unique in that defense counsel are selected in a very competitive, best-qualified standard by the Air Force Judge Advocate General.⁵⁶⁷ 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.⁵⁶⁸ New defense counsel typically have tried between eight and 10 courts-martial trials before starting as a defense counsel.⁵⁶⁹

557 *Transcript of RSP Public Meeting 312* (Dec. 12, 2013) (testimony of Lieutenant Colonel Fansu Ku, Chief, Defense Counsel Assistance Program, U.S. Army Trial Defense Service).

558 *Id.*

559 *Id.*

560 Army's Response to Request for Information 1(d) (Nov. 1, 2013); Army's Response to Request for Information 75(c) (Dec. 19, 2013).

561 *Id.*

562 *Id.*; see also *Transcript of RSP Public Meeting 310-11* (Dec. 12, 2013) (testimony of Lieutenant Colonel Fansu Ku, U.S. Army).

563 *Transcript of RSP Public Meeting 314-19* (Dec. 12, 2013) (testimony of Lieutenant Colonel Julie Pitvorec, Chief Senior Defense Counsel, U.S. Air Force).

564 *Id.*

565 *Id.*

566 *Id.*

567 *Id.*

568 *Id.*

569 *Id.*

In the Air Force, Area Defense Counsel (ADC) receive initial training as defense counsel at the Defense Orientation Course (DOC).⁵⁷⁰ The DOC is held twice a year in an attempt to catch the incoming defense counsel and defense paralegals as they are coming into their jobs.⁵⁷¹ It is primarily taught by the Trial Defense Division, the organization to which all Air Force defense counsel and defense paralegals are assigned.⁵⁷² DOC is a combined course with defense counsel and defense paralegals focusing primarily on how to run a defense office, and the legal issues which they can anticipate encountering during their tenure.⁵⁷³

In 2013, for the first time, the Air Force initiated a litigation training course specific to prosecuting and defending sexual assault cases.⁵⁷⁴ Air Force defense counsel participated in two different levels of courses, the intermediate sexual assault litigation course and the advanced sexual assault litigation course.⁵⁷⁵

The Air Force also relies heavily on on-the-job training.⁵⁷⁶ However, on-the-job training for geographically separated counsel proves complicated.⁵⁷⁷ 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.⁵⁷⁸

A senior counsel in the Trial Defense Division told the RSP that the Air Force struggles to maintain a specialized training regimen because of the limited time that defenders remain in the position, usually only 18 to 24 months for an area defense counsel and 24 to 36 months for a senior defense counsel.⁵⁷⁹

c. Training for Navy Defense Counsel Handling Adult Sexual Assault Cases⁵⁸⁰

At the beginning of their careers, all Navy judge advocates that assist in prosecuting or defending court-martial must complete special Professional Development Standards (PDS), which are checklists of tasks and skills required to progress to greater responsibility.⁵⁸¹ Those judge advocates who exhibit both an aptitude and a desire to further specialize in litigation may apply for inclusion in the MJLCT, which is previously described in more detail.⁵⁸²

570 Air Force's Response to Request for Information 1(d) (Nov. 1, 2013).

571 *Transcript of RSP Public Meeting* 314-19 (Dec. 12, 2013) (testimony of Lieutenant Colonel Julie Pitvorec, U.S. Air Force).

572 *Id.*

573 *Id.*

574 *Id.*

575 *Id.*

576 *Id.*

577 *Id.*

578 *Id.*

579 *Id.*

580 Navy's Response to Request for Information 1(d) (Nov. 1, 2013).

581 *Id.*

582 *Id.*

VI. TRAINING PROSECUTORS, DEFENSE COUNSEL, AND MILITARY JUDGES

After basic training at the JAG school, Navy lawyers go to Region Legal Service Offices (RLSO).⁵⁸³ There, lawyers perform legal assistance work (wills, powers of attorneys, etc.) and begin to experience trial and defense counsel work.⁵⁸⁴ However, they are not assigned cases, though they can help write motions and conduct research.⁵⁸⁵ During their first 24 months, judge advocates begin advocacy training representing Sailors, Marines, and Coast Guardsmen at administrative separation boards.⁵⁸⁶

Following their first 24-month tour, Navy Judge Advocates become eligible to be assigned to a Defense Service Office (DSO) as a defense counsel.⁵⁸⁷ DSOs are located in Washington, DC; Norfolk, Virginia; San Diego, California; and Yokosuka, Japan.⁵⁸⁸ At the DSOs, counsel receive additional training, which includes a basic trial advocacy course focusing on courtroom advocacy.⁵⁸⁹ 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.⁵⁹⁰

Because attorneys enter the Navy with a range of legal experience from their time before military service, MJLCT officers are stationed in all DSO headquarters offices and some detachments, which are smaller regional offices.⁵⁹¹ Also, when appropriate, more experienced defense counsel are assigned as co-counsel to junior defense counsel to ensure continued training and supervision.⁵⁹²

Navy Defense Counsel Assistance Program (DCAP)

In conjunction with the Naval Justice School (NJS) in Newport, Rhode Island, Navy DCAP coordinates and provides training for defense counsel. DCAP also provides ongoing training to current and prospective defense counsel worldwide, through on-site command visits and online training.⁵⁹³ When resources permit, defense counsel also attend civilian courses at the National Association of Criminal Defense Lawyers, Gerry Spence College, and others.⁵⁹⁴

583 *Transcript of RSP Public Meeting 304-09* (Dec. 12, 2013) (testimony of Commander Don King, Director, Defense Counsel Assistance Program, U.S. Navy).

584 *Id.*

585 *Id.*

586 *Id.*

587 *Id.*

588 *Id.*

589 *Id.*

590 *Id.*

591 *Id.*

592 *Id.*

593 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 68 (Annual Report of the Judge Advocate General of the Navy).

594 *Transcript of RSP Public Meeting 304-09* (Dec. 12, 2013) (testimony of Commander Don King, Director, Defense Counsel Assistance Program, U.S. Navy).

In the Navy, defense counsel are also provided on-the-job training.⁵⁹⁵ Sexual assault cases are typically detailed to “core attorneys” assigned to a DSO.⁵⁹⁶ A DSO core attorney is a judge advocate that has completed at least one full tour of duty prior to assuming the duties of a defense counsel.⁵⁹⁷ Detailing of counsel is within the discretion of the DSO Commanding Officer (an O-6 Judge Advocate), who takes into consideration such matters as competence, experience and training, existing caseload, and availability of counsel, as well as case specifics and opportunities for training of counsel.⁵⁹⁸ A Commanding Officer may detail one or more counsel to a particular case and will often detail both an experienced defense counsel and a less-experienced defense counsel to a case to provide the opportunity for practical mentoring.⁵⁹⁹ Additionally, uniformed members of DCAP may also be detailed to cases.⁶⁰⁰

Additionally, Navy and Marine Corps judges complete quarterly evaluations on counsel.⁶⁰¹ These evaluations provide DCAP with the Judiciary’s opinion on courtroom performance of defense counsel in all aspects of litigation.⁶⁰² DCAP uses this feedback to track trends and identify areas for training, and then monitor subsequent evaluations to ensure the training has improved the practice.⁶⁰³ Evaluations of the Judiciary, along with any DCAP remarks, are provided to the leadership of the DSOs for their use in mentoring and further developing individual defense counsel.⁶⁰⁴

Finally, DCAP created and monitors an internet site where defense 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 with any issue from DCAP and the defense bar at large.⁶⁰⁵ Monitoring this discussion board also provides DCAP the opportunity to measure performance and determine future training requirements.⁶⁰⁶

595 *Id.* at 306-09.

596 Navy’s Response to Request for Information 75(d) (Dec. 19, 2013).

597 *Id.*

598 *Id.*

599 *Id.*

600 *Id.*

601 Navy’s Response to Request for Information 1(d) (Nov. 1, 2013).

602 *Id.*

603 *Id.*

604 *Id.*

605 *Id.*

606 *Id.*

d. Training for Marine Corps Defense Counsel Handling Adult Sexual Assault Cases⁶⁰⁷

The Chief Defense Counsel (CDC) of the Marine Corps is designated as the Officer-in-Charge (OIC) of the Defense Services Organization (DSO).⁶⁰⁸ The DSO established formal defense counsel training programs after it was formed in 2011. Defense counsel training requirements are set forth in Marine Corps policy.⁶⁰⁹

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.⁶¹⁰ They typically serve 18 months as defense counsel before moving to another assignment.⁶¹¹ The average litigation experience of both senior defense counsel and defense counsel is 14 months, which includes both prosecution and defense time.⁶¹²

At a minimum, each defense counsel must attend two Continuing Legal Education (CLE) training events each year.⁶¹³ The DSO has an annual CLE training event that every defense counsel and enlisted support staff member attends, in addition to monthly training conducted by the Senior Defense Counsel (usually a Major/O-4 or experienced Captain/O-3) at the local Branch Office and quarterly training by the Regional Defense Counsel (usually a Lieutenant Colonel/O-5 or experienced Major/O-4).⁶¹⁴ Curriculum topics addressed during individual training events vary depending on identified needs within the DSO, but range from practical exercises such as mock cross-examinations and opening statements/closing arguments to more academic classes on new developments in the law.⁶¹⁵

Established in 2011, DCAP is staffed by the Officer-in-Charge and an HQE, a retired civilian public defender from San Diego with over 30 years of experience.⁶¹⁶ The DCAP provides telephone and email assistance for defense counsel, and operates a SharePoint website with an online database of motions.⁶¹⁷

e. Training for Coast Guard Defense Counsel Handling Adult Sexual Assault Cases⁶¹⁸

By longstanding memorandum of agreement between the Coast Guard and the Navy JAG Corps, the Navy is principally responsible for defending Coast Guard members accused of crimes under the UCMJ.⁶¹⁹ In return,

607 Marine Corps' Response to Request for Information 1(d) (Nov. 1, 2013).

608 Marine Corps' Response to Request for Information 75(d) (Dec. 19, 2013).

609 See U.S. MARINE CORPS, ORDER P5800.16A CH7, MANUAL FOR LEGAL ADMINISTRATION (Feb. 10, 2014).

610 *Transcript of RSP Public Meeting* 319-35 (Dec. 12, 2013) (testimony of Captain Scott (Russ) Shinn, U.S. Marine Corps).

611 *Id.*

612 *Id.* at 321; *Transcript of RSP Comparative Systems Subcommittee Meeting* 426 (Jan. 7, 2014) (testimony of Ms. Kate Coyne, Highly Qualified Expert and Deputy Public Defender, San Diego County).

613 Marine Corps' Response to Request for Information 1(d) (Nov. 1, 2013).

614 *Id.*

615 Marine Corps' Response to Request for Information 75(d) (Dec. 19, 2013).

616 *Transcript of RSP Public Meeting* 319-35 (Dec. 12, 2013) (testimony of Captain Scott (Russ) Shinn, U.S. Marine Corps).

617 *Id.*

618 Coast Guard's Response to Request for Information 1(d) (Nov. 1, 2013); Coast Guard's Response to Request for Information 75(c) (Dec. 19, 2013).

619 *Id.*

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.⁶²⁰

Recommendation 26: The Secretary of Defense direct the Service TJAGs and Staff Judge Advocate to the Commandant of the Marine Corps permit only counsel with litigation experience to serve as defense counsel as well as set the minimum tour length of defense counsel at two years or more so that defense counsel can develop experience and expertise in defending complex adult sexual assault cases.

Finding 26-1: Defense experience is difficult to develop due to tour lengths, which are as short as 12-18 months, and the relatively low number of courts-martial in the military today.

Finding 26-2: Not all military defense counsel possess trial experience prior to assuming the role of defense counsel.

Discussion

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.⁶²¹ Like their prosecution counterparts, defense counsel receive training, oversight, and mentoring from senior counsel.⁶²²

5. Civilian Defense Counsel Experience and Career Progression

Civilian defense counsel career progression varies by jurisdiction, and is often less standardized than that of civilian prosecutors. As with prosecutors, new defense counsel in larger public defense organizations frequently go through internal training programs for one to three weeks covering procedure, evidence, ethics, and trial practice, along with basic motions and other litigation topics.⁶²³ For example, in the Alaska Public Defender Agency, there is a two-week “new lawyer” intensive trial practice course.⁶²⁴ Similarly, in Colorado, newer defense attorneys attend an intensive, seven-day course in which they bring their own case to use for learning.⁶²⁵

Afterward, as with prosecutors, public defense counsel are assigned to defend misdemeanor or juvenile cases, often for two to three years.⁶²⁶ During this time, defense counsel may gain experience with judge (bench)

620 *Id.*

621 See, e.g., *Transcript of RSP Public Meeting* 310-12 (Dec. 12, 2013) (testimony of Lieutenant Colonel Fansu Ku, U.S. Army).

622 Services' Responses to Request for Information 1(d) (Nov. 1, 2013); Services' Responses to Request for Information 75(c) (Dec. 19, 2013).

623 See, e.g., *Transcript of RSP Public Meeting* 377 (Dec. 12, 2013) (testimony of Mr. James Whitehead, District of Columbia Public Defender's Office) (“Typically our attorneys are straight out of law school, or had just clerked from local or federal judges, or have very little litigation experience. . . . We put them through a 10-week training involving substantive training as well as skills that culminates in kind of a mock trial with judges at the end[.]”).

624 JSC-SAS REPORT, Appendix C, at 5 (Sept. 2013) (on file at RSP).

625 *Transcript of RSP Public Meeting* 350 (Dec. 12, 2013) (testimony of Ms. Laurie Rose Kepros, Colorado Office of the State Public Defender).

626 See, e.g., *id.* at 363-64 (testimony of Ms. Amy Muth, The Law Office of Amy Muth); see also *id.* at 377-79 (testimony of Mr. James Whitehead, District of Columbia Public Defender's Office).

VI. TRAINING PROSECUTORS, DEFENSE COUNSEL, AND MILITARY JUDGES

trials.⁶²⁷ Juvenile defense work allows defense counsel to become familiar with issues of procedure, evidence, and trial practice in many serious cases (including sexual assault, robbery, arson, and homicide) without the same stakes; if convicted, many juveniles receive only probation, or a term of confinement until they reach age 18 or 21, depending on when the court's jurisdiction ends.⁶²⁸

Next, defense counsel typically begin defending basic felony crimes.⁶²⁹ As counsel progress in experience, expertise, and credibility, they begin to work as second-chair counsel with senior colleagues on more serious felony crimes such as aggravated assault, robbery, sexual assault, and homicide.⁶³⁰ Senior attorneys handle the most serious cases, such as sex offenses.⁶³¹

"[T]he way we teach it is ... if you would not give that lawyer a homicide case, you can't give him a rape case. It is very serious."⁶³²

Some civilian defense counsel identified turnover and burnout as challenges they face in seeking to build expertise and continuity through training and experience.⁶³³ One defense counsel stated: "And just like all public defense systems throughout this country, there is a turnover issue, right? And there is always going to be a turnover issue. It's something that we have to live with. I practiced in the Public Defender Department in Hawaii for 10 years and now in New Mexico for 10 years, and that's just part of what we have to deal with."⁶³⁴ To avoid burnout, some offices do not have specialized sections, but instead divide serious felony cases among their most experienced defense counsel.⁶³⁵

627 See, e.g., *Transcript of RSP Comparative Systems Subcommittee Meeting* 203 (Jan. 7, 2014) (testimony of Ms. Yvonne Younis, Defender's Association of Philadelphia) ("[B]efore our attorneys get their first rape jury cases, rape cases, and I did the math on this and I think it is pretty accurate, they have tried over between 1200 and 1400 trials . . . Now, those are judge trials.").

628 See, e.g., *Transcript of RSP Public Meeting* 378 (Dec. 12, 2013) (testimony of Mr. James Whitehead, District of Columbia Public Defender's Office).

629 See, e.g., *Transcript of RSP Comparative Systems Subcommittee Meeting* 204 (Jan. 7, 2014) (testimony of Ms. Yvonne Younis, Defender's Association of Philadelphia).

630 JSC-SAS REPORT, Appendix L, at 12 (Sept. 2013) (on file at RSP).

631 *Id.*, Appendix C, at 5.

632 *Transcript of RSP Comparative Systems Subcommittee Meeting* 204 (Jan. 7, 2014) (testimony of Ms. Yvonne Younis, Defender's Association of Philadelphia).

633 See, e.g., *Transcript of RSP Public Meeting* 375-76 (Dec. 12, 2013) (testimony of Mr. Barry G. Porter, New Mexico Public Defender Department).

634 *Id.* at 371; see also, e.g., *id.* at 350-51 (testimony of Ms. Laurie Rose Kepros, Colorado Office of the State Public Defender) ("Similar to some of the other people you're hearing from right now, we have a lot of turnover. We're a public defender's office. That is where people go to get some experience, and sometimes unfortunately they move on. So we are constantly training new people and so we're very sensitive to those challenges.").

635 See, e.g., *id.* at 336 (testimony of defense attorney Mr. Lane Borg, Metropolitan Public Defenders, Portland, Oregon, describing division of office); *id.* at 337 ("I think it does damage and trauma to people to make them only prosecute sex crimes or only defend sex crimes. I think it's good to get to do other things[.]"); see also *id.* at 375-76 (testimony of Mr. Barry G. Porter, New Mexico Public Defender Department) ("[W]e find that attorneys burn out on these cases because they're so emotionally driven and [because of] the impact on our clients.").

6. Military Defense Counsel Experience Level

Counsel interviewed during site visits and at meetings stated that defense counsel tour lengths may range from 12-24 months.⁶³⁶ Some defense counsel said they were assigned adult sexual assault cases during their first tour of duty, when they had no prior litigation experience.⁶³⁷

Recommendation 27: The Service TJAGs and the Staff Judge Advocate to the Commandant of the Marine Corps 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.

Finding 27-1: Some defense counsel told the Response Systems Panel and the Subcommittee that because they do not have independent budgets, their training opportunities were insufficient and unequal to those of their trial counsel counterparts.

Discussion

During site visits and RSP and Subcommittee meetings, defense counsel, and HQEs, particularly in the Marine Corps, voiced concerns about training budget funding inequities between prosecutors and defense counsel.⁶³⁸ Defense counsel from the Air Force, Army, and Navy also mentioned inequities in funding generally between the prosecution and defense, but did not emphasize them with respect to training specifically. However, all Services provided details about their training budgets, as noted below.

636 *Id.* at 321, 325 (testimony of Captain Scott (Russ) Shinn, U.S. Marine Corps); *Transcript of RSP Comparative Systems Subcommittee Meeting 426-27* (Jan. 7, 2014) (testimony of Kate Coyne, Highly Qualified Expert and Deputy Public Defender, San Diego County); *Minutes of RSP Comparative Systems Subcommittee Preparatory Session, Marine Corps Base Quantico* (Mar. 5, 2014) (on file at RSP) (interviews of defense counsel); *Minutes of RSP Comparative Systems Subcommittee Preparatory Session, Norfolk, VA* (Feb. 20, 2013) (same); *Minutes of RSP Comparative Systems Subcommittee Preparatory Session, Fort Hood, TX* (Dec. 10, 2013) (same).

637 *Id.*

638 *Transcript of RSP Public Meeting 329-31* (Dec. 12, 2013) (testimony of Captain Scott (Russ) Shinn, U.S. Marine Corps); *Transcript of RSP Comparative Systems Subcommittee Meeting 437-39* (Jan. 7, 2014) (testimony of Ms. Kate Coyne, Highly Qualified Expert and Deputy Public Defender, San Diego County); *Minutes of RSP Comparative Systems Subcommittee Preparatory Session, Marine Corps Base Quantico* (Mar. 5, 2014) (on file at RSP) (interviews of defense counsel).

VI. TRAINING PROSECUTORS, DEFENSE COUNSEL, AND MILITARY JUDGES

Table 10

Trial and Defense Counsel Annual Training Spending By Service⁶³⁹

| Service | Army | Navy | Air Force | Marine Corps ⁶⁴⁰ | Coast Guard |
|---|---|-------------------|--|---|----------------------|
| Defense Has Own Budget? | No | No ⁶⁴¹ | Yes | Unclear. ⁶⁴² | No. See Navy budget. |
| Annual Defense/DCAP Budget | DCAP \$377,178.96 (“sexual assault funds”) | N/A | \$350,000 for other than litigation travel | DSO access to \$250,000 SAPR/SVC training funds | See Navy budget. |
| Annual Trial Counsel Budget | TCAP \$468,734.64 (“sexual assault training funds”) | Not provided. | N/A | TCAP \$250,000 SAPR/SVC training funds | See Navy budget. |
| Annual Average Spending Per Defense Counsel | \$1033.36 per counsel ⁶⁴³ | Not provided. | \$1870 | \$3,125 per defense counsel | Not provided. |
| Annual Average Spending Per Trial Counsel | \$1407.61 per counsel | Not provided. | \$2105 (per STC) ⁶⁴⁴ | \$2,778 per trial counsel | Not provided. |

7. Highly Qualified Experts

Recommendation 28: The Service TJAGs and the Staff Judge Advocate to the Commandant of the Marine Corps continue to fund and expand programs that provide a permanent civilian presence in the training structure for both trial and defense counsel. The Military Services should continue to leverage experienced military Reservists and civilian attorneys for training, expertise, and experience to assist the defense bar with complex cases.

639 Services' Response to Request for Information 146 (Apr. 11, 2014).

640 Marine Corps' Response to Request for Information 146 (Apr. 11, 2014) (explaining number for FY 13).

641 *But see* Navy's Response to Request for Information 146 (Apr. 11, 2014) (explaining that Naval Justice School administers funding and quota allotments for both trial and defense counsel, and that Defense Service Offices each receive about \$10,000 annually for personnel training).

642 *But see* Marine Corps' Response to Request for Information 146 (Apr. 11, 2014) (stating that Office of Chief Defense Counsel has budget to fund travel and training for leaders of Defense Services Organization (DSO) and that DSO leaders had access to \$250,000 in funds for sexual assault training programs in FY 13—the same amount provided to TCAP).

643 *But see* Army's Response to Request for Information 146 (Apr. 11, 2014) (listing “\$2,500” as another per capita spending amount for defense counsel, with alternative calculation and discussion).

644 *But see* Air Force's Response to Request for Information 146 (Apr. 11, 2014) (discussing figures in context).

Finding 28-1: 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 ensures an enduring base level of experience and continuity, and adds an important perspective. Civilian expert advocate participation also adds transparency and validity to military counsel training programs.

a. Army Highly Qualified Experts (HQEs)

Experienced civilian HQEs in the Army supplement and support the TCAP and DCAP components, as well as some experienced litigation experts serving in similar civilian positions. Most HQEs have criminal law experience of 20-30 years, which often includes work in both civilian and military practice.⁶⁴⁵ Working in tandem with TCAP and DCAP, the HQEs provide continuity for training, a different viewpoint, and significant specialized expertise in adult sexual assault litigation.

Established in 2007, Army DCAP is staffed by five experienced trial practitioners, military and civilian, including two HQEs.⁶⁴⁶ DCAP provides training, resources and assistance for defense counsel worldwide.⁶⁴⁷ Both HQEs are former military judges and experienced trial practitioners with over 40 years of combined military justice experience.⁶⁴⁸ Created in 1980, the Army's TCAP oversees training for all Army trial counsel. TCAP is composed of five O-3 (captain) training officers; an O-5 (lieutenant colonel) deputy; a lieutenant colonel chief; and two highly-qualified experts (HQEs), who are civilians with more than 30 years of combined prosecution experience between them.⁶⁴⁹

b. Navy Highly Qualified Experts (HQEs)

In May 2013, the Navy hired an HQE to work with TCAP.⁶⁵⁰ The HQE has 17 years of experience as a prosecutor, as well as experience as an instructor and course coordinator for the NDAA.⁶⁵¹

c. Marine Corps Highly Qualified Experts (HQEs)

The Marine Corps recently hired three HQEs to assist in all sexual assault cases; two are assigned to the prosecution.⁶⁵² The primary job of the HQEs is to train trial counsel to prosecute sexual assault cases. Trial counsel must consult with their regional HQE within ten days of being detailed to any sexual assault case.⁶⁵³

645 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 55, 68 (Annual Report of the Judge Advocate General of the Navy); *id.* at (Marine Corps Annual Military Justice Report for Fiscal Year 2013); see also, e.g., *Transcript of RSP Comparative Systems Subcommittee Meeting 411* (Jan. 7, 2014) (testimony of Mr. Neal Puckett, Highly Qualified Expert, Defense Counsel Assistance Program, U.S. Navy).

646 *Transcript of RSP Public Meeting 310* (Dec. 12, 2013) (testimony of Lieutenant Colonel Fansu Ku, U.S. Army).

647 *Id.* at 310-11.

648 *Id.* at 311.

649 *Transcript of RSP Public Meeting 412* (Dec. 12, 2013) (testimony of Lieutenant Colonel Jay Morse, Chief, TCAP, U.S. Army).

650 Navy's Response to Request for Information 1(d) (Nov. 1, 2013); Navy's Response to Request for Information 75(c) (Dec. 19, 2013); CAAF FY13 ANNUAL REPORT, *supra* note 397, at 69 (Annual Report of the Judge Advocate General of the Navy).

651 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 69 (Annual Report of the Judge Advocate General of the Navy).

652 Marine Corps' Response to Request for Information 1(d) (Nov. 1, 2013).

653 *Id.*

D. MILITARY JUDGE TRAINING AND ASSESSMENT OF COUNSEL'S ADVOCACY SKILLS

Recommendation 29: 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.

Finding 29-1: Military judges participate in joint training at the Army's Judge Advocate General's Legal Center and School. The recommendations for an enhanced role of military judges noted elsewhere in this report may necessitate increased funding for training of judges.

Discussion

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.⁶⁵⁴ Once selected, military judges from all Services attend a three-week Military Judge Course at the Army JAG School in Charlottesville, Virginia, which covers judicial philosophy, case management, and specific scenarios.⁶⁵⁵ All judges must successfully complete this course before their respective Service TJAGs will certify them to be judges.⁶⁵⁶

The Military Judge Course includes substantive criminal law and procedure, practical exercises designed to simulate trial practice, and scenarios focusing on appropriate factors for consideration in reaching appropriate sentences.⁶⁵⁷ The entire course is designed around a sexual assault case.⁶⁵⁸ The chief trial judges of all Services collaborate to create the Military Judge Course curriculum, and all Services provide instructors.⁶⁵⁹ Experienced senior military judges grade the capstone exercise, which is a mock trial over which student military judges must preside.⁶⁶⁰ Military Judges also attend the week-long Joint Military Judge Annual Training (JMJAT).⁶⁶¹ Presiding over sexual assault cases is a major focus of both courses.⁶⁶² In both courses, military judges participate in training seminars regarding sentencing, including for sexual assault cases.⁶⁶³

Depending on funding, judges also attend Joint Military Judges Training, in conjunction with the National Judicial College.⁶⁶⁴ Trial judges for all Services historically attended the JMJAT.⁶⁶⁵ However, the 2013 course

654 Army's Response to Request for Information 147 (Apr. 11, 2014).

655 *Id.*

656 *Id.*

657 *Id.*

658 *Id.*

659 *Id.*

660 *Id.*

661 *Id.*

662 *Id.*

663 *Id.*

664 *Id.*

665 See *id.*; CAAF FY13 ANNUAL REPORT, *supra* note 397, at 65 (Annual Report of the Judge Advocate General of the Navy).

was postponed due to the impact of sequestration and the continuing resolution in Congress.⁶⁶⁶ On odd-numbered years, the training is held at the Air Force JAG School, and on even-numbered years it is hosted by the Navy and Marine Corps, in conjunction with the National Judicial College (NJC) at Reno Nevada.⁶⁶⁷ JMJAT is the vehicle for discussing current topics of judicial training interest, such as the new Article 120, the impact of command influence in sexual assault cases, advanced evidence, sentencing methodology, and judicial ethics.⁶⁶⁸ All members of the trial judiciary participate in these classes, which will be completed during FY 14.⁶⁶⁹ Successful completion of NJC curriculum leads to a professional certificate, and potentially a Master's or doctorate degree.⁶⁷⁰

Recommendation 30: The Service TJAGs and Staff Judge Advocate to the Commandant of the Marine Corps consider implementing a system similar to the Navy's quarterly evaluations of counsel's advocacy to ensure effective training of counsel.

Finding 30-1: 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 the Trial Counsel Assistance Program (TCAP) for use in training plans. The other Military Services do not similarly measure and assess performance following advanced training.

Discussion: Navy and Marine Corps judges complete quarterly evaluations on counsel.⁶⁷¹ These evaluations provide the Judiciary's opinion on courtroom performance of counsel in all aspects of litigation.⁶⁷² This feedback identifies trends and areas for training, which training supervisors then monitor to ensure training is working.⁶⁷³ In the Navy, evaluations of the Judiciary, along with any DCAP remarks, are provided to the leadership of the DSOs for their use in mentoring and further developing individual defense counsel.⁶⁷⁴ Based on the information gathered, the Subcommittee did not see evidence of this practice in the other Services.

666 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 65 (Annual Report of the Judge Advocate General of the Navy).

667 *Id.*; see also Services' Responses to Request for Information 147 (Apr. 11, 2014).

668 *Id.*

669 *Id.*

670 CAAF FY13 ANNUAL REPORT, *supra* note 397, at 65 (Annual Report of the Judge Advocate General of the Navy).

671 Navy's Response to Request for Information 1(d) (Nov. 1, 2013).

672 *Id.*

673 *Id.*

674 *Id.*