

Appendix G:

ATTORNEY TRAINING

PROSECUTION TRAINING

Additional Training Courses Offered by Army TCAP in 2013¹

Intermediate Trial Advocacy Course

Judge Advocates with approximately 1-3 years of experience out of the Judge Advocate Officer Basic Course (JAOBC) are usually assigned to serve as trial counsel or defense counsel. Within the first three months in that assignment, the attorney will attend this course, which builds on the military justice block from JAOBC. This course is offered twice a year and presents intensive intermediate trial skills instruction and practical exercises and workshops covering issues regarding courts-martial from case analysis through presentencing argument. The following areas are addressed: trial procedure; trial advocacy techniques; professional responsibility; and topical aspects of current military law, with particular emphasis on the military rules of evidence. The factual scenario that forms the basis of all instruction is a sexual assault scenario.

Regional Conferences

TCAP conducted seven three-day Regional Conferences. All of TCAP's regional conferences are focused on sexual assault and special victim. The instructors include uniformed/TCAP personnel, TCAP HQEs, and prominent civilian experts in the area of sexual assault and special victim prosecutions. These three-day training events include instruction concerning the prosecution of special victim cases (i.e., sexual assault cases, domestic violence, child pornography, and the sexual and physical abuse of children). They also include instruction concerning new developments in criminal law, advocacy classes, developing strong sentencing cases, impact of diminished responsibility, and roundtable discussions among participants. TCAP solicits subject areas and areas of focused instruction from the various Chiefs of Military Justice for the installations covered by the Regional Conferences.

Outreach Program Training

TCAP conducted approximately 21 of these 2.5-day training events. The instructors include both uniformed TCAP personnel and TCAP HQEs. This program concentrates on basic military justice practice and procedures with a focus on sexual assault prosecutions and walking new/relatively new counsel through the courts-martial process from initial allegation through sentencing. The outreach program includes up to eight hours of sexual assault specific training, advocacy training and specific/focused training as requested by the Chiefs of Military Justice focusing on issues encountered at participating installations. Additionally, TCAP personnel conduct

1 Information from Services' Responses to RSP Request for Information 1d (Nov. 1, 2013).

roundtable case discussions with trial counsel and Chiefs of Military Justice, and daily individual case reviews when not engaged in formal instruction.

Essential Strategies for Sexual Assault Prosecution (ESSAP) Course

TCAP conducted four of these three-day training events. Taught in conjunction with the New Prosecutor's Course (NPC), the subject matter is sexual assault crimes and crimes against special victims. The training is modeled after sexual assault institutes throughout the country, which train prosecutors to successfully prosecute sex and other special victim crimes. The ESSAP is an Army led training event, designed to provide trial counsel of all experience levels with an offender focused approach to prosecuting sexual assault cases. The course covers: developing offender-focused themes/theories by understanding the offender's pathology; non-intuitive responses by rape victims; using experts to explain victim behavior; health, medical, and forensic issues observed in sexual assault cases including how to understand and effectively present medical evidence; and presenting a sentencing case.

Complex Litigation Course

TCAP conducted one three-day course on complex litigation. The Complex Litigation course focuses on the very difficult aspects and challenges of litigating high profile cases, such as voir dire, discovery, use of expert testimony, and sentencing. Taught by TCAP personnel, HQEs, and experts from the field, the course provides relevant and timely training for advanced litigation.

National Center for Missing and Exploited Children (NCMEC) Course

TCAP sponsored two of these training events. The NCMEC Course is a four-and-one-half-day seminar to familiarize prosecutors with computer-facilitated crimes committed against children and the ever-evolving legal and technical issues surrounding those investigations. The course walks prosecutors through an online child exploitation case by first familiarizing prosecutors with how perpetrators use the computer and internet to locate children to exploit and disseminate child pornography. Day two focuses on the computer technologies used by the sexual predator to commit crimes against children, the use of experts to explain the technology involved, and search and seizure issues when dealing with digital media. Day three focuses on the trial strategies of an online child exploitation case, from charging to plea negotiations to sentencing. Day four includes instruction modules on the use of medical evidence in child exploitation cases, to include discussions of child psychosexual and physical development, and concerns regarding long term complications of sexual exploitation. The final half day of instruction is geared to issues specifically raised in military prosecutions of child exploitation cases, including charging decisions and sentencing considerations.

Sexual Assault Trial Advocacy Course (SATAC)

TCAP conducted one SATAC, which included both trial counsel and defense counsel. The SATAC is a two-week trial advocacy course focusing on the fundamentals of trial advocacy in the context of litigating special victim cases. The course includes lectures, break-outs, and numerous advocacy exercises, culminating in a full-day trial for each participant. The course is a follow on to The Judge Advocate General's Legal Center and School's (TJAGLCS) one-week long Intermediate Trial Advocacy Course.

Introduction to Forensic Evidence Course

TCAP offered this five-day training event twice. This course is held at the Defense Forensic Science Center (formerly United States Army Criminal Investigation Laboratory (USACIL)), Fort Gillem, Georgia using USACIL instructors. During the investigation of many sexual assault cases, local investigators from the

Army's Criminal Investigation Division (CID) send various pieces of evidence to the lab for examination. This collected and examined evidence can be used to identify (or exclude) perpetrators and to corroborate the victim's account of events. This course introduces the students to the laboratory analysis involved in sexual assault cases, to include: the examination of DNA evidence; the examination of trace evidence such as fibers; serology; the examination of digital evidence; testing for drugs such as date rape drugs; and a review and use of the criminal records database. The various laboratory experts conduct classes on their areas of expertise and demonstrate how examinations are conducted. It also includes instruction on firearms and ballistics evidence, and an expanded block on discovery issues and obligations.

Sexual Assault Expert Symposium

TCAP offered this three-day training event once. The expert symposium introduces participants to the scientific disciplines they will encounter while litigating special victim cases. Classes are taught by some of the leading experts in their fields. The experts include: a Forensic Pathologist; a Forensic Psychologist; a Forensic Psychiatrist; a Sexual Assault Forensic Examiner/Sexual Assault Nurse Examiner; a Forensic Toxicologist; a Forensic Child Interviewer; a Forensic Computer Examiner; a Fingerprint Examiner; a Trace Evidence Examiner; and a DNA and Serology Examiner.

Special Victim Prosecutor (SVP) Conference

TCAP conducted an SVP conference, which brought all SVPs assigned throughout the world to one location to discuss trends and issues in the investigation and disposition of special victim cases. The conference is a three-day event where TCAP personnel, as well as military and civilian HQEs, provide relevant and timely military justice training, both substantive and advocacy, to the attendees. Additionally, substantive legal issues regarding defense experts, administrative issues, the need for automation and the need for personnel support, are discussed and courses of action developed to attempt to enhance the prosecution of cases and minimize the distractions caused by the administrative demands placed on each SVP.

DEFENSE COUNSEL TRAINING

Army

In Fiscal Year 2013, the Defense Counsel Assistance Program (DCAP) conducted or sponsored the following courses:

DC 101

DCAP s conducted this training at Fort Leavenworth in October 2012, Wiesbaden, Germany in August 2013, Fort Bragg in August 2013, Fort Lewis in September 2013, and Fort Hood in September 2013. DCAP also conducted DC 101 in February 2013 at Fort Belvoir. This three-day course combines law and trial advocacy focused on preparing newly assigned defense counsel to represent their clients at courts-martial. Two DCAP personnel (often including Trial Defense Service (TDS) HQEs) serve as instructors of this course. Areas of instruction include: initial client interview; major client decisions; discovery; Article 32 investigations; all stages of the court-martial process; roundtable discussion of active cases, and professional responsibility.

Annual Training

DCAP, on behalf of Trial Defense Service (TDS), conducted annual training for all counsel assigned to TDS. DCAP conducted training in Germany in November 2012 for counsel stationed in Europe and the Central

Command Area of Responsibility. DCAP conducted training in December 2012 for all TDS counsel east of the Mississippi River and Pacific Rim. DCAP conduct training in January 2013 for all counsel west of the Mississippi River. Instructors include members of DCAP (including both HQEs) and TDS counsel. These conferences typically include a heavy focus on sexual assault or special victims crimes. Topics covered at these three day events include themes and strategies in sexual assault cases, MRE 412, case updates, and professional responsibility.

Regional Training

The Army's Regional Defense Counsel (RDC) host annual regional training events. In 2012, DCAP coordinated with RDCs to train all TDS counsel east of the Mississippi River in March and all defense counsel west of the Mississippi River in April. These events provide three days of instruction to all defense counsel in their particular region(s). DCAP (to include both HQEs) provides most of the instruction at these events based on the RDC's training plan. Traditional topics include professional responsibility, new developments, evidentiary issues, trial advocacy, and post-trial matters. Sexual assault and special victim issues are always included, and previous regional conferences focused almost exclusively on sexual assault cases.

DC 201

DCAP conducted this training for the East Coast in February 2013 and the West Coast in April 2013. This three-day course combined law and trial advocacy focused on preparing more experienced defense counsel on more complicated areas of the law. Two DCAP personnel (often including TDS HQEs) served as instructors for this course. Areas of instruction covered advanced topics of criminal law, including: character evidence, MRE 404(b), 412, 413, 414, remote testimony, confrontation, privileges and immunities. Training on sexual assault issues and special victim issues was included.

Intermediate Trial Advocacy Course (ITAC)

The Judge Advocate General's Legal Center and School (TJAGLCS) hosted three of these events in September, November, and February. TDS typically sends eight officers to each event.

Advanced Communications and Advocacy

DCAP participated in these joint training events hosted by TCAP/DCAP. Instruction was provided by civilian experts, along with TCAP and DCAP personnel. The focus is exclusively on courtroom advocacy and consists of lecture, group discussion, and practical exercise. There are typically four of these events scheduled annually.

Sexual Assault Training Advocacy Course (SATAC)

DCAP and TCAP jointly hosted this course. This course utilizes a sexual assault fact pattern to train more advanced counsel on effective advocacy in all phases of the trial process. Instructors include DCAP and TCAP personnel, as well as outside instructors, selected for their expertise in advocacy and sexual assault cases. Instruction format included lecture, small group discussion, one on one mentoring, and practical exercises.

Sexual Assault Expert Symposium

DCAP and TCAP jointly hosted this course in the late spring. This week-long training consisted of lectures given by experts commonly encountered by advocates in a typical sexual assault case. There were also break-out sessions for prosecutors and defense counsel to address their specific areas of concern with the experts.

U.S. Army Trial Defense Service (TDS) Leadership Training

TDS held this three day training event in August 2013 for RDCs and Senior Defense Counsel from both active and reserve components. The instruction typically covers various leadership duties and substantive law updates that can be shared with their counsel. DCAP (including both HQEs) presented a series of classes on legal issues that included some sexual assault and special victim emphasis (e.g., MRE 412).

APPENDIX: NAVY MILITARY JUSTICE LITIGATION CAREER TRACK (MJLCT) DETAILS²

In 2007, to improve the overall quality of Navy court-martial litigation, the Navy JAG Corps established the MJLCT. The MJLCT is a career track for judge advocates with demonstrated military justice knowledge and advocacy skills. The track combines courtroom experience, training, and education with mentoring from senior litigators who help judge advocates develop the skills needed to become preeminent trial lawyers. Military Justice Litigation Qualified (MJLQ) officers are detailed to lead trial and defense departments at each of nine Regional Legal Service Offices (RLSOs) and four Defense Services Organizations (DSOs), which provide Navy prosecutors and defense counsel, respectively.

At the close of FY13, there were 65 Navy MJLCT officers, with 45 filling the 53 MJLCT-designated billets. Additional MJLCT officers are at the Office of Military Commissions, on aircraft carriers, at the Naval Justice School, in VLC positions, and at post-graduate school to obtain Masters of Laws (LL.M.) degrees in trial advocacy. The promotion rate for MJLCT officers is monitored, and the in-zone MJLCT officers were selected for promotion by the FY14 promotion selection boards at a rate comparable to, or better than, the overall in-zone selection rate.

SPECIALIST I MJLQ is the entry point for the MJLCT. A judge advocate may be qualified as SPECIALIST I after demonstrating military justice litigation proficiency and MJLCT potential. Candidates are normally eligible for SPECIALIST I after their fourth year of active duty. After SPECIALIST I qualification, a judge advocate may qualify as SPECIALIST II by obtaining sufficient military justice litigation experience and professional development as a naval officer. Candidates will normally be eligible for SPECIALIST II after their tenth year of active duty. Following SPECIALIST II, a judge advocate may qualify as EXPERT after obtaining significant military justice litigation experience and demonstrating leadership of junior judge advocates. EXPERT is ordinarily reserved for judge advocates who have reached the senior-most MJLCT positions. Candidates will normally be eligible for EXPERT after their sixteenth year of active duty.

SPECIALIST II and EXPERT MJLQ are community-management tools to guide the assignment, training, and professional development needs of MJLQ judge advocates. Navy JAG senior leaders seek to provide all MJLQ judge advocates with training and duty assignment opportunities that facilitate their professional development. Military justice litigation proficiency includes quantitative and qualitative criminal courtroom litigation experience and demonstrated proficiency in military justice procedure. As judge advocates seek MJLCT advancement, they are required to demonstrate increased courtroom experience, continued growth in litigation leadership, and familiarity with the Navy's broader mission. MJLQ judge advocates are encouraged to explore the wide variety of naval experiences that contribute to the development of a broad understanding of the duties of judge advocates, and to seek out detailing to non-litigation billets even after MJLQ. Accordingly,

² 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 77-79.

applicants for EXPERT MJLQ should generally have served at least two years in a non-litigation billet prior to their application for qualification.

Table of Information Gathered from Civilian Prosecution Offices³

Office	Organization/Size	Experience Required to Prosecute Sex Crimes	Prosecutor Training Program	Remarks
Alaska Attorney General's Office ⁴	Several districts; Anchorage has Special Assault Unit (SAU) with five prosecutors	No minimum.	Start misdemeanors, go to general felonies, then SAU. No set criteria to enter SAU.	
Maricopa County (AZ) Attorney's Office ⁵	Divisions, then Bureaus. Sex Crimes Bureau has 19 attorneys.	Varies. Range from 3-17 years. No minimum. Budget cuts/ lower salaries have increased turnover and decreased experience.	4 week training for new prosecutors. In-house and statewide training before assigned to specialty bureaus. Spend 9-12 months on misdemeanors, then trial bureau, then specialty such as sex crimes.	"Prosecutors need to learn up front that there [are] as many different responses to the trauma of a sexual assault as there are victims. The one person who presents with a stereotypical stress-related trauma may not be the same as the next person, who is rather stoic." ⁶

3 Unless otherwise indicated, the source for this information is JOINT SERVICE COMMITTEE SEXUAL ASSAULT SUBCOMMITTEE (JSC-SAS) REPORT (Sept. 2013) appendices.

4 JOINT SERVICE COMMITTEE SEXUAL ASSAULT SUBCOMMITTEE (JSC-SAS) REPORT ON CIVILIAN SEXUAL ASSAULT PROSECUTION, APPENDIX C (Sept. 2013) [hereinafter JSC-SAS Report].

5 JSC-SAS Report, Appendix D.

6 See Transcript of RSP Public Meeting 481 (December 12, 2013) (testimony of Bill Montgomery, Maricopa County Attorney).

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San Diego County District Attorney's Office ⁷	Sex Crimes and Human Trafficking Division ⁸ consists of 11 attorneys.	Start in a misdemeanor unit; minimum 4 years experience before assigned sex crimes cases.	Every other year, 3-day formal in-house training. Also train other members of SART and attend trainings as time/budget permit.	Office part of Sexual Assault Response Team (SART), which includes military investigators, prosecutors, medical personnel, and victim support personnel
Kent County, Delaware Prosecutor's Office ⁹	16 prosecutors total. 2 attorneys in Sex Crimes Unit. Rotate every 3-4 years.	Juvenile bench trials for 2 years, then misdemeanor jury trials, then general felony unit before Sex Crimes Unit.	Lead prosecutor attends trainings if time allows; preferred training for young prosecutors is to be in court.	
United States Attorney's Office, District of Columbia (Superior Court Division) ¹⁰	Sex Offense and Domestic Violence Section prosecutes all misdemeanors and felonies involving sexual abuse.	No minimum, but several years of experience required to interview for sex crimes positions.	Ongoing in-house training and outside conferences. DOJ National Advocacy Center offers variety of courses. Supervisors conduct pre-trial conference before felony trials, observe them, and give feedback/training after. ¹¹	Recent/recommended training topics: FETI interviewing; sexual assault nurse training; DNA and digital evidence; secondary trauma; sex offender registration; crime victims' rights laws. ¹²
Athens-Clarke County (GA) District Attorney's Office ¹³	3 special victims prosecutors are lead counsel on all crimes against female, elderly, child victims, and all serious violent felonies	Assigned to courts with experienced supervisory attorney and two line prosecutors. Supervisor is also special victims prosecutor.		

7 JSC-SAS Report, Appendix E.

8 See *San Diego County District Attorney's Office*, at <http://www.sdcda.org/office/criminal-divisions.html>.

9 JSC-SAS Report, Appendix F.

10 JSC-SAS Report, Appendix G.

11 See *Transcript of RSP Public Meeting 469* (December 12, 2013) (testimony of Kelly Higashi, AUSA, District of Columbia).

12 *Id.* at 465-68.

13 JSC-SAS Report, Appendix H.

Baltimore State Attorney's Office ¹⁴	Special Victims Unit devoted to prosecution of cases involving sex crimes domestic violence and child abuse. Also prosecutes sex-related misd.	3-5 years of experience prosecuting misdemeanors and general felonies (such as drug, property, and gun crimes) before specialty units, including SVU		
Kent County Prosecutor's Office (Grand Rapids, MI) ¹⁵	17 felony prosecutors, 4-5 misdemeanor prosecutors.	Experience level about 9-10 years.	Typically attend prosecutor trainings in San Diego, CA or Huntsville, AL	
Bronx District Attorney's Office ¹⁶	Child Abuse/Sex Crimes Bureau (CAS) prosecutes all sexual assault cases involving both child and adult victims. 24 attorneys assigned.	Normally hired as Misdemeanor ADAs; 5-6 years of experience to do sex crimes.	Attend a series of varied training sessions; New York Prosecutors Training Institute (NYPTI) conducts specialized training. NYPD also has trainings that ADAs sometimes attend.	
Brooklyn County District Attorney's Office ¹⁷	Separate unit for sex crimes prosecution (includes crimes against children). 30 attorneys assigned.	1-1.5 years' experience doing sex-related misdemeanors (such as prostitution or "touching" cases) followed by one year at the Grand Jury.		

14 JSC-SAS Report, Appendix I.

15 JSC-SAS Report, Appendix J.

16 JSC-SAS Report, Appendix K-1.

17 JSC-SAS Report, Appendix K-2.

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New York County District Attorney's Office ¹⁸	No unit; chief and two deputies supervise pool of experienced attorneys who report to them for these cases	Four years of experience, and interest in sexual assault cases, plus interview screening.	Ongoing substantive training: laws, rules Continue to train most senior people. Bring in outside speakers. ¹⁹	
Multnomah County District Attorney's Office (OR) ²⁰	3 large divisions, each divided into smaller specialty units. Specialty unit prosecutes adult sex crimes and other felony assaults	New prosecutors in misdemeanor units for 3-4 years, then Felony Trial Division 2-6 years (property or drug crimes). Then eligible for person crime units.		
Yamhill County District Attorney's Office (OR) ²¹	No special unit for adult sex crimes. 10 prosecutors in office, including the DA. Two attorneys handle all adult felony cases.	New attorneys do misdemeanors before felonies. No minimum time requirement for assignment to sex crimes cases; based on supervisor discretion.	New prosecutors attend a basic prosecution course, and then attend training sponsored by DOJ. Also attend annual OR District Attorney's Conference, and other specialized training as time and funding permit.	

18 JSC-SAS Report, Appendix K-3.

19 See *Transcript of RSP Public Meeting 432* (December 12, 2013) (testimony of Martha Bashford, New York County District Attorney's Office).

20 JSC-SAS Report, Appendix L.

21 JSC-SAS Report, Appendix L.

Philadelphia District Attorney's Office ²²	Family Violence and Sexual Assault Section includes 18 prosecutors; 4 are new-hires handling misdemeanor DV and preliminary hearings. Other 14 handle more serious adult/child cases.	9-12 months on misdemeanors, followed by stint in Juvenile Court Unit (may include sex cases for bench trials). 8-9 years before becoming a supervisor	Most hired directly out of law school. 2 wk. orientation plus observation of trials and hearings before handling cases. Prosecutors Assoc. training on criminal code; mentoring and guidance from supervisors and more experienced prosecutors. Many in-house trainings.	
Austin (TX) District Attorney's Office ²³	No separate unit or division for sex offenses. Prosecutors in Trial Division assigned by court and supervised by a Trial Court Chief	Prosecutors assigned to sex offense cases must at least have experience prosecuting misdemeanor cases.	The Trial Court Chief supervises, mentors, and trains prosecutors working in the division.	
Arlington County (VA) Commonwealth Attorney's Office ²⁴	15 prosecutors in office. All assigned all types criminal cases, but primarily three prosecute sexual assault cases.	One very experienced, second is fairly experienced, third relatively new attorney.		

22 JSC-SAS Report, Appendix M.

23 JSC-SAS Report, Appendix N.

24 JSC-SAS Report, Appendix O.

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<p>Snohomish County Prosecutor's Office (WA)²⁵</p>	<p>Criminal Division divided into specialized units. Special Assault Unit (SAU) is composed of 7 deputy prosecutors (including the lead prosecutor).</p>	<p>Typically 4-6 years of experience before considered for SAU. Misdemeanors for 2-3 years, then felonies such as drugs, then SAU or other specialty unit.</p>	<p>No formal training program; new prosecutors observe trials, attend state trainings and law enforcement trainings on sexual assault. Some at little or no cost. May also attend other national training seminars if funding is available</p>	<p>Expected to rotate assignments throughout their career. May spend 2-3 years in SAU before rotating to another unit, but will likely return to the SAU later.</p>
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²⁵ JSC-SAS Report, Appendix P.

Table of Information Gathered from Civilian Defender Offices

Name	Type of Organization	Structure	Experience	Training	Remarks
Alaska Public Defender Agency ²⁶	Quasi-independent agency within the Department of Administration; 13 Public Defender offices in the state.	Anchorage Office has 23 attorneys; 5 handle misd. and 18 handle felonies. 6 are qualified and trained to handle sex cases.	Senior attorneys handle most serious sex offense cases. Large and dispersed area, system of travel and coordination is required to gain experience	New lawyers second-chair felony cases. Supervisors evaluate them. Two-week intensive training on trial practice for new attorneys. Also a defense conference that provides on-going training.	Due to budget issues, both training events were cancelled in 2013.
Bronx Defenders ²⁷	Public defense and advocacy firm: criminal defense attorneys, advocates, civil attorneys, immigration attorneys, social workers, investigators	120 attorneys, divided up and assigned to different mixed trial teams	Defense counsel from the Bronx Defenders never sit at trial alone, and despite the attorney's experience level, will always have a co-counsel.	One trial team is used for the first year public defenders for training	

26 JSC-SAS Report, Appendix C.

27 JSC-SAS Report, Appendix K-1.

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<p>Multnomah County Metropolitan Public Defender Services²⁸</p>	<p>Private, nonprofit corporation originally established by the Multnomah County Bar Association. 63 attorneys; largest public defender organization in Oregon.</p>	<p>Services are provided via a contract with Multnomah County (Metropolitan also has a contract with neighboring Washington County).</p>	<p>Typically little prior experience, handle misdemeanor cases, progress to felony drug or property crime cases for about a year. New attorneys second-chair major cases. Assigned to cases based on their experience levels.</p>	<p>Oregon Criminal Defense Lawyers Association provides CLE training for defense attorneys, which attorneys from the Metropolitan Public Defense Association attend. They also will attend a defense college in Macon, GA.</p>	<p>Problem retaining experienced attorneys, because the salaries are less than equivalent prosecutors earn</p>
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28 JSC-SAS Report, Appendix L.