UNITED STATES DEPARTMENT OF DEFENSE

JUDICIAL PROCEEDINGS PANEL

PUBLIC MEETING

FRIDAY
MAY 13, 2016

The Panel met at the Judge Advocate General's Legal Center and School, 600 Massie Road, Charlottesville, Virginia, at 9:00 a.m.,
Hon. Elizabeth Holtzman, Chair, presiding.

PRESENT

Hon. Elizabeth Holtzman
Hon. Barbara Jones
Victor Stone
Tom Taylor
VADM(R) Patricia Tracey
WITNESSES

Overview of Basic JAG Training and Schools

BG Charles Pede, U.S. Army, Commander/Commandant, Judge Advocate General's Legal Center and School
Col Kirk Davies, U.S. Air Force, Commander/Commandant, The Judge Advocate General's School
CAPT John Luce, U.S. Coast Guard, Chief, Legal Policy and Program Development
LtCol Hanorah Tyer-Witek, U.S. Marine Corps, Executive Office, Naval Justice School

Overview of Training and Experience of Attorneys Prosecuting Sexual Assault Cases

Col Katherine Oler, U.S. Air Force, Chief, Government Trial & Appellate Counsel Division
CDR Michael Luken, U.S. Navy, Director, Trial Counsel Assistance Program
LTC Bret Batdorff, U.S. Army, Chief, Trial Counsel Assistance Program
Maj Jesse Schweig, U.S. Marine Corps, Officer-In-Charge, Trial Counsel Assistance Program
Julia Hejazi, U.S. Marine Corps, Highly Qualified Expert, Trial Counsel Assistance Program

Overview of Training and Experience of Attorneys Defending Sexual Assault Cases

COL Daniel Brookhart, U.S. Army, Chief, Trial Defense Service
Col Daniel Higgins, U.S. Air Force, Chief, Trial Defense Division
Col Terri Zimmermann, Reserve Counterpart to the Chief Defense Counsel of the Marine Corps/Head, Defense Services Branch
CDR Stephen Reyes, U.S. Navy, Director, Defense Counsel Assistance Program
Overview of Training and Experience of Special Victims' Counsel

Col Andrea deCamara, U.S. Air Force, Chief,
Special Victims' Counsel Division

Col Katherine McDonald, U.S. Marine Corps,
Officer-in-Charge, Victims' Legal Counsel Organization

LTC Christopher Kennebeck, U.S. Army, Chair and Professor, Criminal Law Department

Charlotte Cluverius, U.S. Navy, Deputy Chief of Staff, Victims' Legal Counsel Program

STAFF:

Dale L. Trexler - Chief of Staff

Lt Col Jacqueline Stingl - Designated Federal Official
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Adjourn
P-R-O-C-E-E-D-I-N-G-S

(9:28 a.m.)

LT COL STINGL: Good morning. Welcome to this morning's meeting of the Judicial Proceedings Since Fiscal Year 1012 Amendments Panel, also known as the Judicial Proceedings Panel or JPP.

I am Lieutenant Colonel Jacqueline Stingl, the Designated Federal Official for the JPP today.

The Department has appointed the following distinguished members to the Panel: the Honorable Elizabeth Holtzman, who serves as the Chair of the JPP and previously served on the Response Systems to Adult Sexual Assault Crimes Panel, or RSP for short; the Honorable Barbara Jones, who also served as Chair of the RSP; Vice Admiral, Retired, Patricia Tracey; Professor Tom Taylor, and Mr. Victor Stone.

This Panel is a Federal Advisory Committee and must comply with the Federal Advisory Committee Act and the Sunshine Act. Any
information provided by the public to the Panel members must also be available to the public.

Thank you. Madam Chair?

CHAIR HOLTZMAN: Thank you very much, Colonel. Good morning. I would like to welcome everyone to today’s meeting of the Judicial Proceedings Panel. All five members of the Panel are here today.

Today’s meeting is being transcribed, and the meeting transcript will be posted on the JPP’s website.

Let me apologize for the late start, but technical problems interfered. So, we very much appreciate everyone’s patience.

Before we begin this morning, I want to thank Brigadier General Chuck Pede and the faculty and staff of the Judge Advocate General’s Legal Center and School, who graciously agreed to host the Panel for this meeting. On behalf of the Panel, thanks to all of you for helping us to bring this meeting together.

The Judicial Proceedings Panel was
created by the National Defense Authorization Act of 2013, as Amended by the National Defense Authorization Act for 2014 and 2015. Our mandate is to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault since the most recent amendments to 120 of the UCMJ in 2012.

Today's meeting focuses on the JPP's congressional task to assess the training and experience level of military counsel who serve as trial defense and Special Victims' Counsel for adult sexual assault cases. We will consider how the Services plan to conduct attorney military justice training, specifically addressing development of litigation skills for adult sexual assault cases.

To begin today, the Panel will be pleased to hear from leaders of the Army, Air Force, and Navy JAG schools and the Coast Guard's Chief of Legal Policy and Program Development. Following this overview session, the remainder of
the meeting will include three sessions focusing on prosecutor/defense counsel and Special Victims' Counsel training and experience.

We appreciate everyone's making the trip to Charlottesville to join us today, and we look forward to hearing from the each of you.

Each public meeting of the Judicial Proceedings Panel includes time to receive comments and input from the public. The Panel did not receive any requests from the public to appear at today's meeting, but we did receive a number of written submissions commenting on a proposal received by the JPP at last month's public meeting that addresses the rights of sexual assault victims in the appellate process.

These public comments and all materials for today's meeting and previous meetings are available on the JPP's website, which is jpp.whs.mil.

The Panel very much appreciates the submissions that we received and we intend to consider this issue in more detail at a future
public meeting; namely, the issue of victims' rights in the appellate process.

We continue to welcome comments from the public on this matter, the topic of today's meeting, or other issues considered by the Panel.

Thank you very much for your attention, and I believe we are ready to begin our first session.

Thank you very much, Members of the Panel, for your presence here.

I guess we might as well start from my right to left with Brigadier General Charles Pede, U.S. Army Commandant, Judge Advocate General, Legal Center and School.

General Pede, you are really a glutton for punishment. You have been here before before this Panel, and I really appreciate your coming back and enlightening us with your experience and your views.

BG PEDE: Ma'am, thank you very much. I want to make sure I am talking into the microphone. Is this one okay? Okay.
Ma'am, welcome. Members of the Panel, welcome. Welcome to TJAG's Legal Center and School. We are honored to have you here.

This is an important committee. We are honored to support your work. And it is a special honor as well to welcome my colleagues at the various schools that educate our lawyers and paralegals to our regimental home as well. So, a very warm welcome to each of you, and we hope your day is productive.

I will try to keep my remarks brief, in the hopes of saving time for any questions you may have.

TJAG's Legal Center and School -- we know it as the LCS -- is designed as a cradle-to-grave legal institution, legal education institution. We educate and train all Army lawyers and paralegals. We also educate and train large numbers of lawyers and paralegals from all the Services. In fact, we are populated in a very healthy way by professors from all the Services here as well. We educate and train
annually upwards of 5,000 students, resident students, and nearly 20,000 students online in our JAG University.

As a preliminary point of emphasis, the LCS is the only ABA-accredited DoD law school. This is, in our view, a significant attribute of our Corps' educational model. Our education and training is deliberate, carefully planned and executed, and is comprehensive across our six practice areas in the Army.

Over the course of a career, for Army students, we educate and train lawyers and paralegals from the moment they enter our Corps up to and including successive tours as Senior Judge Advocates and paralegals responsible for legal services over large footprints, both in forward areas and in garrison in the United States and elsewhere around the world. In short, our education and training model is continuous and career-long and very deliberate.

In the area of criminal justice specifically, and sexual assault more
specifically, our education and training begins
with newly-minted attorneys. These same
attorneys return in regular, predictable
intervals to the school over the course of time,
jobs, and experience for more and deeper and
broader education and training.

The bulk of the criminal law education
is mandatory over time. So, for example, an
officer attends the Officer Basic Course. Then,
in order, for example, the New Prosecutor Course,
the Intermediate Trial Advocacy Course, and then,
the Sexual Assault Trial Advocacy Course, all
layered, all sequential.

Every lawyer entering a mid-grade
supervisory criminal law billet in our Service
attends the Justice Managers' Course. New
defense counsel, for example, must attend, after
Officer Basic Course, a Defense Counsel 101
training session, a 201 training session, and
then, the Intermediate Trial Advocacy Course, and
then, other training courses that are offered.

Our new SVC, our Special Victims'
Counsel, courses are now part of this progression as well. Each course is designed to refresh judge advocates and continue where they last left off.

Our flagship course is our graduate course. The graduate course is a year-long and has as a chief component, significant instruction in criminal law for mid-level managing attorneys. A criminal law specialty is also offered, and this course is ABA-accredited and awards its graduates with an LLM in Military Law, and is also multi-Service, all the Services. All the Services are represented in the graduate course.

Our second flagship course is the Military Judge Course. Our longest and most intense short course instruction, it is three weeks. Judges from all the Services attend prior to assuming the Bench and must be certified according to strict academic standards prior to graduation.

And that is the schoolhouse, essentially. Taking a step back, it is useful to
note that what happens in the classrooms of this building is part of a much larger training program in our Corps. Our education and training model is based on institutional training, education, think the LCS; functional training, think our training arms, TCAP and DCAP, organizations I believe you have heard from; unit training, think the local JAG office, the local legal office, and then, personal development. All four of these components in our view are critical to developing and sustaining criminal law expertise over time.

And so, our schoolhouse programs fit into this larger four-tiered program. And this larger plan, then, is best described, in my view, as a series of courses and training synchronized and integrated over time in order that they complement each other, build on each other. This has been very deliberate for us over the last, I would say, eight years, to ensure that synchronization and integration in skills and experience over time.
The synchronization is overseen by the Office of the Judge Advocate General, Criminal Law Division, in the Pentagon. The LCS is merely a part of that and is in collaboration with DCAP and TCAP, and we execute the plan.

I would add, then, simply as I close, that we overlay this model with a developmental model in criminal law. It is a skill-identifier program, skill identifiers 1 through 4. These are certifications counsel acquire over the course of a career. Our skill-identifiers in criminal law require experience and performance through quantifiable and intangible metrics, numbers of cases tried, training attended, time on the job, and recommendations from supervisors. We reinforce our skill-identifier program with resources, both in personnel and money to back it up.

Since no system of education and training is ever perfect or finished, I am pleased to also say that we have a dynamic, I believe a dynamic, honest, and regular process of
evaluation, reflection, self-study, student and field input, to critique ourselves. These efforts are programmatic, as is our annual curriculum review, to ensure we remain at the school a vital and in-touch educational institution. And then, the self-reflection is enhanced by the periodic self-study required by a very rigorous ABA certification and accreditation process.

I close by offering a highlight of three changes in law and policy which may answer a few of the questions you have asked about what has changed recently in our education. The SVC program, the change in Article 32 and the changes to MRE 513, the Psychotherapist Privilege, all three have necessitated significant changes either in the addition of new certifying courses for our SVCs, for example; changes in curriculum to ensure proper execution of the Article 32 hearing procedures, and then, of course, changes in how we teach MRE 513 and the scope of that privilege as amended.
All three of those in so many
different ways affect how our professors change
the curriculum on a daily basis, especially
something like a change in an MRE, where there
now is no precedent to fall back on. And so, it
is a lot of discovery, learning and experiential
professorship, as we train judges all the way
down to the newest lieutenants that join our
Corps. It is what lawyers do and we enjoy doing
it, but it is the challenges that we have had
most recently over the last two years.

This concludes my opening remarks, and
I very much look forward to your questions, and
once again, welcome you to Charlottesville, to
the Legal Center and School. I hope you have a
productive day, Ma'am.

CHAIR HOLTZMAN: Thank you very much,
General Pede.

And now, we are very pleased to hear
from Colonel Kirk Davies, U.S. Air Force,
Commandant, The Judge Advocate General's School.

COL DAVIES: Good morning, Madam Chair
and Members of the Panel.

I'm Colonel Kirk Davies, Commandant of

The Judge Advocate General's School at Maxwell

Air Force Base, Alabama.

It is my honor to speak with you
today. In the interest of time, I am going to
focus only on part of the prepared remarks that I
made and submitted already to your staff.

CHAIR HOLTZMAN: Certainly. Thank you.

COL DAVIES: Yes.

The Air Force Judge Advocate General
School, or as I will refer to it here as AFJAGS,
is the focal point of military justice training
in the Air Force JAG Corps. In fiscal year 2015,
we trained 858 Air Force and other Service judge
advocates in military-justice-related courses,
including 503 trial counsel, 244 defense counsel,
and 111 Special Victims' Counsel. We are
currently on-track to exceed those numbers for
this fiscal year.

Each year the school offers nine
resident courses with military justice components, as well as our two online distance learning military justice courses. I will identify three things in describing our approach to military justice and sexual assault litigation training.

First, we offer full-spectrum training, by which I mean training for all counsel, trial, defense, and Special Victims' Counsel.

Second, we offer multi-level training, by which I mean litigation training at the beginner, intermediate, and advanced levels.

Third, we offer collaborative training, by which I mean we collaborate with the other Services.

Our full-spectrum training begins with our three entry-level training classes for counsel. As I discuss these courses, I will identify any evolutions in their sexual assault litigation curriculum in recent years, particularly since the publication of the RSP
report in 2014.

Our full-spectrum training begins with the entry-level Judge Advocate Staff Officer course, also known as JSOC. This is a nine-week Course that includes a foundation in military justice and advocacy skills. The first five weeks, roughly 165 instructional hours, are dedicated to military justice training.

Specific sexual assault prosecution training includes four-and-a-half hours of plenary lecture and 16 hours of Moot Court litigation for each student. The Moot Court is divided into three phases held at different times. First, motions and voir dire; second, litigation of the case-in-chief, and, third, sentencing. During the Moot Court, students are divided into two-person trial teams while instructors play the role of defense counsel and military judge.

This past academic year the faculty made significant revisions to the Moot Court itself. The case now includes a new fact pattern
capable of providing several possible defense
theories, including alibi defenses and mistake of
fact as to consent. We also have incorporated a
more robust motions practice, with each student
arguing an MRE 412 motion. In sentence, the Moot
Court now includes an unsworn statement by the
victim, in addition to the traditional
presentation of other victim impact and unit
impact sentencing witnesses.

Next, the defense orientation course
is the mandatory initial training for all Air
Force area defense counsel. It is a week-long
course designed to prepare defense counsel for
their new assignments. Of the 36 hours of
training, 20 hours are devoted to general
litigation and advocacy training and two hours
are devoted specifically to defending sexual
assault cases.

Finally, our initial training courses
are rounded out with the Special Victims' Counsel
Course. This course is the mandatory initial
training for all Special Victims' Counsel in the
Air Force. The entire focus of this eight-day course is sexual assault cases and the role of the Special Victims' Counsel. This course includes 60 hours of instruction. Of this instruction, two hours of plenary lecture and three hours of practical exercise are exclusively dedicated to the litigation of MRE 412 and 513 motions in sexual assault cases by the Special Victims' Counsel. Since 2014, we have expanded training to include representation of children and DOE civilians.

The SVC course is one of our most collaborative courses. In fact, next week AFJAGS will host 94 students at the SVC course and, of those, 55 will hail from other Services.

In relation to the SVC course, perhaps the single most significant improvement at AFJAGS this past year was the hiring in June 2015 of the AFJAGS Senior Counsel Advisor for Special Crimes and Victim Assistance, Mr. Mark Stout. Mr. Stout serves as the primary curriculum developer and instructor for Special Victims' Counsel courses,
Victim Witness Assistance Program courses, and other instructional material relating to the special victim matters.

Mr. Stout's duty description also allows him to serve as a Special Victims' Counsel for sexual assault victims and appellate counsel for Special Victims' Counsel's represented clients. Mr. Stout collaborates with all other Service JAG schools and SVC communities in the continued development of SAPR and SVC curriculum.

Beyond these initial training courses, AFJAGS offers multi-level sexual assault and court martial litigation training at the intermediate and expert level. AFJAGS has two resident courses that focus primarily on litigating sexual assault cases, the Intermediate Sexual Assault Litigation Course and the Advanced Sexual Assault Litigation Course.

The Intermediate Sexual Assault Litigation Course is designed to familiarize all litigators, trial, defense, and Special Victims' Counsel, with legal and policy issues pertaining
to the litigation of sexual assault cases.

AFJAGS offers five ISALCs per year.

Since the release of the RSP report in June 2014, ISALC has evolved to include a fully-formed SVC curriculum all alongside the trial and defense counsel blocks of instruction. Also, selected senior trial, defense, and Special Victims' Counsel attend every ISALC and serve as adjunct faculty for the course.

We also collaborate with other Services by routinely hosting other students from other Services in this course. For example, next week at Joint Base San Antonio-Lackland, ISALC 16D will include four Coast Guard JAGs and one Navy JAG.

And I will depart just briefly. We have recently added another block to this course you may be interested in, which is a block addressing resiliency for trial counsel themselves, who are handling these kinds of cases.

The Advanced Sexual Assault Litigation
Course is a one-week course designed for senior trial counsel, senior defense counsel, and Special Victims' Counsel, and Special Agents of the Air Force Office of Special Investigations. The course is comprised of 11 hours of lectures and includes topics such as sexual assault, victim interviews, direct and cross-examination of the accused in a sexual assault case, and presentation of forensic evidence.

Since 2014, ASALC has also evolved to more fully integrate the SVC in an active role in the course curriculum, including engaging SVCs in victim interview practical exercises and an exercise where SVCs practice advocating before a convening authority. For example, an SVC student practices advocating to a convening authority on behalf of a client for an expedited transfer or for a particular case disposition preferred by the client.

Our three remaining litigation courses are geared more towards general litigation skills. Those are the trials course, a three-day
litigation course held eight times a year, TDAC, the Trial and Defense Advocacy Course, held twice a year, and the Advanced Trial Advocacy Course, held once a year.

To enhance the effectiveness of our litigation training, all of our faculty, to include our Reserve faculty, are now formally trained in the National Institute for Trial Advocacy, or NITA, methodology. NITA is the nation's leading provider of legal advocacy skills training. The NITA method trains our faculty in providing specific, relevant, constructive feedback on technique, style, and strategy to improve attorney litigation skills.

Finally, I emphasize that, aside from the curriculum changes noted above, AFJAGS conducts ongoing curriculum review and assessment of all of our courses. Courses are subject to yearly formal review and inspection.

For some courses, AFJAGS uses academic performance testing to ensure students learn the stated objectives. As a result of these
processes, AFJAGS makes continual incremental improvements to all of our academic courses.

Thank you for giving me the opportunity to testify here today. I look forward to any questions you may have.

CHAIR HOLTZMAN: Thank you very much, Colonel Davies. We very much appreciate your presentation.

We are now very pleased to hear from Captain John Luce, U.S. Coast Guard Chief, Legal Policy and Program Development.

Captain Luce, thank you.

CAPT LUCE: Yes, ma'am. Madam Chair and Distinguished Members of the Panel, good morning.

My name is John Luce, and I work in our Coast Guard Headquarters Office of Legal Program and Policy Development.

The Coast Guard's small size and relatively small number of court-martial cases present some unique challenges to the way we provide training to our judge advocates. We do
not have our own judge advocate school. Instead, we collaborate with all the other Services to provide training for our judge advocates.

   All of our attorneys go to the Naval Justice School for the basic lawyer course and start there, their introduction to the Coast Guard and being judge advocates through that opportunity. For follow-on training, we work with the Commanding Officer of our Legal Service Command, our largest legal office all of our staff judge advocates in our Headquarters, Office Chiefs, to allocate our training opportunities based on positions and individuals' experiences. We traditionally send our judge advocates to the other Service schools for their follow-on training.

   For our defense counsel, through agreement with the Navy, we provide seven Coast Guard attorneys to the Navy Defense Service Offices. In return, the Navy provides representation for all of our Coast Guard members. And through that collaboration, we are
able to further use the training opportunities available through the Navy for our defense counsel services.

For our prosecutors, throughout the course of their careers as they go into legal billets and other positions within the Coast Guard, they will attend schools at the other Service schools for their training and professional development opportunities. In addition, we have agreements informally at the local level with other Service installations, predominantly with the Marine Corps, where we send a lot of our attorneys to get additional trial experience.

For our Special Victims' Counsel, they attend both Army and Air Force SVC courses, and we have also done internal training and opportunities as well.

With our military judges, they all attend the military judge course here in Charlottesville.

In addition to the military justice
opportunities, the Coast Guard also has a close relationship with the Department of Justice and we send attorneys to be Special Assistant U.S. Attorneys in Los Angeles, San Diego, Tampa, San Juan, and the Environmental Crime Section at the Department of Justice. Through those opportunities, we are able to leverage some training through the Department of Justice as well.

That is a brief overview of the Coast Guard and how we provide training. I am pleased to be here today and I will answer any questions you may have.

CHAIR HOLTZMAN: Thank you very much, Captain Luce.

Our next presenter will be Lieutenant Colonel Hanorah Tyer-Witek, U.S. Marine Corps, Executive Office, Naval Justice School.

Thank you very much, Colonel, for your attendance and we look forward to your presentation.

LTCOL TYER-WITEK: Thank you, Madam
Chair and fellow Members of the Panel. It is a pleasure to be here today.

On behalf of Captain Shannon Kopplin, who is the Commanding Officer of the Naval Justice School, I am here to present some testimony on what we do at the Justice School.

The Naval Justice School is a little unique in what you have heard today, in that we train all Sea Service judge advocates. So, we have judge advocates in the Accession Pipeline bringing them into the Service from the Coast Guard, as you have previously heard, the Navy, and the Marine Corps. And we train them all together in a basic lawyer course.

It is a 10-week course. As was mentioned in the Response System's Panel report, 57 percent of that 10-week course focuses on military justice and criminal justice matters. Since that report came out, we have made some changes to the curriculum, and now, it is a good five weeks that we focus on military justice.

It begins with the fundamentals, the
basics of the Military Rules of Evidence and it builds to a complete mock trial, where we have two-person trial teams that try a sexual assault case scenario. In the past it used to be 50 percent of our students got that sexual assault case scenario, and the other one was an aggravated assault case, but we have switched that now. So, 100 percent of our students are trying a full general court-martial contested case before they depart that 10-week basic lawyer course. They deal with all of the issues associated with it. Our instruction, we think, has greatly improved in the past three years from where we began to where we are now.

The second real change we have had at the Justice School is we have hired an Educational Program Specialist. Her name is Ms. Pamela Hicks. She has just come onboard in January, and it has been a labor of love trying to get her hired. It has been about a three-year process. We are so happy to have her here.

But she is really revolutionizing the
way we plan curriculum. She is bringing what we refer to as the science of education into military training. And it is a bit foreign to those of us who are very military kind of folks, institutionalized, if you will, but she is turning our training on its head, frankly.

We do a learn-see-do model. So now, we have a learner-centric focus of effort. We have the students are training each other a lot. They do a lot of small group. It is really focused around the small group.

And she is beginning with our basic lawyer course curriculum, and we hope that she will continue to build out to our other courses that we offer. But we are very excited to have her here.

The third point for your consideration, Members, is the Military Justice Training Continuum document. I believe you have that in your folder. This is just a visual depiction -- you know a picture speaks a thousand words -- to let the Panel members know how the
Navy, in particular, has set out the training over the course of a judge advocate's career.

This is the way it looks. You can see from here that we do have courses we integrate very often with the Air Force and the Army to plug holes in what courses we don't offer at the Justice School.

The Naval Justice School's mission is really twofold. We train, of course, judge advocates, like I was just talking about and paralegals, legal professionals in the Services, but we also train non-legal professionals. So, senior officers, senior enlisted members, legal officers, and legal clerks; they are other military specialties that come through the Justice School to get their legal training on really how to administer the military justice system from their perspective or from their vantage point.

In the yellow on this document, those are all the courses that we offer in residence at the Naval Justice School. We are also offering
many courses online, and I don't know if it is
the wave of the future, but it is the future for
us. So, many in the civilian systems it was 10
years ago that they started doing this. We are
now embracing this as new and changing. That is
one of the things that Ms. Hicks is going to
offer and help us with. She does have a
specialty area in distance learning.

You know, the Navy and the Marine
Corps are both very different Services in that we
are very dispersed, the Navy, in particular,
aboard ship and overseas and in areas where
getting back to a resident course is not
feasible. So, our distance program really plugs
gaps in that training in a way very unique to the
Navy, of the Naval Service.

Those are my three points. I am very
much looking forward to questions, and I am very
honored to be here today. Thank you.

CHAIR HOLTZMAN: Thank you very much
for your presentation.

Any questions? Judge Jones?
JUDGE JONES: I am interested in the preparation of defense counsel, only because one of the things that we noted early on was that there was at least a perception that they weren't being given as many resources as the government counsel, if you will.

I wonder, because I honestly couldn't keep track of how everyone was training everybody as we went along, if each of you could comment on how early in the process you integrate the defendant's counsel and the prosecutor's counsel in training.

I know there is one program where they are all in it together and they role-play their own roles, and I assume they trade roles for some period of time. But how are they? What are the distinctions in terms of training? It sounds like the defense gets fewer hours specifically to defense training.

If that question made sense, General, could you answer it?

BG PEDE: Absolutely, yes, ma'am, it
does. I can tell you, as well, part of my role as the Commander of the LCS is to exercise general supervisory responsibility over our Trial Defense Service, but it is actually headed up by Chief of the Trial Defense Service, Colonel Dan Brookhart, who is here today. I believe you will hear from him later as well. So, hopefully, I will simply echo what he would tell you.

That is, our training begins at the basic course, where all counsel are together training as new lieutenants. They go through criminal law instruction plus advocacy training, and they do it together. None of those lieutenants are yet either trial counsel or defense counsel. That is the baseline.

When they get to their units, at some point they will become defense counsel by assignment. Typically, our policy is that we are not to assign defense counsel until they have had other jobs, preferably trial attorney jobs as a prosecutor. That tends to be our effort. It is not exclusive, though. Some will become DCs
before they have been a trial attorney, trial
counsel.

Once a defense counsel, the defense
system in the Army has its own resource. It
doesn't have independent funding, but it has its
own training. So, we built a number of years ago
the Defense Counsel Assistance Program. That
organization operates in the field around the
world, as Dan will tell you, an enormous variety,
healthy, robust set of training environments.

I mentioned DC 101. That is a
training course that is given onsite to
collections of defense counsel, new defense
counsel. Then, there's 201. It is layered and
designed to be more challenging. There is always
platform instruction and, then, there is on-your-
feet practical exercises. They typically will
either use a sexual assault case that is created
for those training environments or they will use
their own cases.

We have here at the Schoolhouse the
Intermediate Trial Advocacy Course. Counsel,
defense counsel, return for that. That is done by the faculty here.

We have the Sexual Assault Trial Advocacy Course, usually 16 seats for both sides of the bar. So, they are equally represented there.

And then, importantly from my standpoint, being responsible in my former life -- I have been responsible as a Chief of the Criminal Law Division for overall resourcing, for training, it is a precept in our training that our counsel for both sides of the bar will be equally resourced. So, we have joint training, but we also ensure an adequate and generally equal amount of funding for both sides of the bar.

If Dan Brookhart wants to conduct a course and it costs $50,000, our goal has been to ensure he has got that money to do that. They can develop new courses. They have got courses planned and orchestrated over time, and they are tried and tested.
He can best tell you whether he is getting the resources that he needs, and I know that he will do that, whether he is or not. My view has been over the last eight years they have been very well-resourced, and that is something I watch very closely.

JUDGE JONES: Thank you, General.

Colonel Davies?

COL DAVIES: Thank you, ma'am. Yes, ma'am.

Similar to the Army, all of our counsel receive the same basic training at the JSOC course that I described. The defense counsel have a separate training course that is a five-day course, the Defense Orientation Course, that is only defense counsel. The other litigation courses that I described for you, defense counsel are included in equal numbers in all of those courses other than the SVC course, which is a separate course for SVC.

Colonel Dan Higgins is the Chief of our Trial Defense Service Branch. He will be
here later today. He collaborates with our faculty on the curriculum and the adjunct faculty that we bring into that course. So, he is fully involved in the actual execution of that Defense Orientation Course.

JUDGE JONES: Thank you.

Go ahead, Captain.

CAPT LUCE: Yes, ma'am.

JUDGE JONES: Thank you.

CAPT LUCE: By agreement, the Coast Guard works through the Navy. In addition to the defense counsel that we provide to the Navy, our Chief of Defense Services Division oversees the Coast Guard Defense Counsel Program, and we have provided additional training for him as well. For example, he recently attended the Trial Lawyers' College and he also did the Advanced Courtroom Communications Course. So, in addition to the training that we do through the Navy, we also fund additional training for our defense counsel.

JUDGE JONES: Thank you.
Colonel?

LTCOL TYER-WITEK: Ma'am, for the Navy, the Marine Corps, and the Coast Guard who participate, the Naval Justice School is neutral, if you will, for the core training elements. We really do a concerted effort to make sure that, if we are offering a trial course, that we have a corresponding defense course.

And so, on that chart that I have provided, there is a key and you can see where the green courses are the trial counsel courses; the orange or light orange courses are the defense counsel courses. And then, courses that we offer at the Justice School that are in general military justice are offered in equal part to both trial and defense counsel.

Sometimes we just have breakout sessions where the defense counsel can get specific to their cases in a more private setup. But we don't take sides as the leadership of the Justice School.

JUDGE JONES: In my experience, it was easier to prosecute a case than it was to defend
it. So, I have always thought that, and I think you see it, that defense counsel, at least in the civilian world, tend to be more experienced and go to defense organizations after they have had quite a bit of experience.

I think it has already been mentioned. You end up with someone who has never tried a case being a defense counsel. Do you use -- I don't think all the Services use highly-qualified experts, but how do you supplement in that situation, which I gather is bound to happen?

Colonel?

COL DAVIES: I would say, first of all, we would not have a defense counsel who has never tried a case. Our defense counsel are selected on the highly-qualified model.

JUDGE JONES: Right.

COL DAVIES: They have to have been in court in order to be certified by the Judge Advocate General as a trial counsel. So, before they shift to the defense counsel role, they will have been certified as competent to serve in a
court martial. Colonel Higgins can talk more about those qualifications, but they will not appear as a defense counsel unless they have been in court before.

JUDGE JONES: General, the Army?

BG PEDE: Army is similar, but there's going to be exceptions. Everybody tries their first case, from our perspective, at some point.

JUDGE JONES: You have more volume.

BG PEDE: We have more volume. We also have built a structure for this very purpose, to compensate. So, we have senior defense counsel; we have senior attorneys, multiple offices. We typically never try a case -- and this was true when I was a captain -- we typically never tried a case solo. So, the view is, whether you are government or defense, but especially defense, there will be co-counsel. So, if it is your first time, you will have a co-counsel, typically, a more senior counsel, typically, somebody who has tried more cases. And they provide that kind of experience and
From a training perspective, the resourcing over the last 10 years has magnified, certainly since I was a captain. If you think about the civilian experts that have been described here, we have one on faculty here that I failed to mention, a civilian, Ms. Patti Sudendorf, who is on the criminal faculty now, a civilian career prosecutor, Chief of the SVU unit in Chicago for a number of years, but just vastly experienced, on the faculty here.

The Defense Counsel Assistance Program that Colonel Brookhart will talk about, all of us have experienced the great benefit of having civilian experts come onto our teams to help, and they consult on cases regularly. I talk with them every month. They describe their promotions practice to trial practice, to case consulting on defenses and arguments to make during motions. They are very embedded in the process.

So, there's an awful lot of resources devoted to the defense bar. It is never perfect,
but we think we have come a long way in the last 10 years.

JUDGE JONES: Thank you.

Thank you, Madam Chair.

CHAIR HOLTZMAN: Mr. Taylor?

MR. TAYLOR: First of all, thank you very much for being here today. Thank you for your leadership, service in the schools that you are heading.

There is a current discussion going on in legal circles about whether the Air Force and the Army have fallen behind the Navy when it comes to the experience level of litigators. There are people who are arguing in the literature now that we need to do a better job of this as a Service in the Army and the Air Force.

I guess that one of the answers that I have seen over time -- and I think I heard a little bit of it today in the comments from the two of you -- is that you try to make up this experience with training; that that becomes somewhat of a compensatory factor, if you will,
to make up for what is lacking in actual years or numbers of cases tried.

But I just wondered if you would comment, General Pede, and then, Colonel Davies, on how well you think that works in terms of this overall discussion? Can you really make up what you lack in experience with the kinds of training opportunities that you have discussed?

BG PEDE: Sir, thanks for that question. It is a very healthy debate right now. My short answer is, yes, I think you can compensate, but there is no substitute for experience.

I think anybody who has tried a case would know there is simply no substitute. You can train until the cows come home, and you will simply not be as finely-tuned as somebody who is actually trying cases. That doesn't mean that somebody who has tried cases for 20 years is any good, however. We all know that.

So, it, to me, is a question of attitude, devotion, effort, skills, trained, and
then, tried. And so, it is very intangible in my view.

So, yes, part of our system is designed to compensate for the churn, the transitions that we will customarily have to accommodate six practice areas over the worldwide operational spectrum. And I think that does a tremendous job in compensating.

Our structure, our supervisory structure compensates for that. It also doesn't just compensate, it infuses expertise. I would never concede the point, in fact, I would make the point adamantly that our supervisory counsel are experienced. They may not be the best prosecutors and defense counsels a courtroom has ever known, but they are competent and they are oftentimes more than competent; they are excellent.

I, frankly, would put our counsel, defense or prosecutors, up against any -- it doesn't matter how many years of experience you offer me -- I would put them up against any. I
have seen it over and over again.

So, it is not that we don't have
issues. It is not that we don't have challenges.
But I am confident that our systems develop the
counsel properly.

And more to the point, we created in
the Army the Special Victims' Prosecutor Program
to deal with this very point. We have highly-
vetted, selected trial attorneys whose talents
are natural.

I was there at the beginning of that
program. Our criteria for that program were,
they have got to be better than OER good in
court, meaning they have to be more than paper
good, meaning really good in court through
empirical, anecdotal assessments and
recommendations.

And then, they have got to be really
good with people because you can try a good case,
but if nobody wants to work with you, you are
going to fail.

Those are continuing criteria for our
Special Victims' Prosecutors. The paradigm is three years in those billets. The paradigm is somebody who has tried cases before. So, we have people who serve repetitive tours in trial billets. Those are our experts. Those are the people we call upon to try our murder cases as well and other high-profile, complex cases.

So, all the Services have been focused on this in a very deliberate way. And, yes, there is a weakness in our transitions. There is an embedded weakness in that, but we think, after 240 years, we are close to the sweet spot in how we do it. That doesn't mean we can't get better. We are every day trying to figure out how to do it just a little bit better. But I think the complement of all those programs gets us there, sir.

MR. TAYLOR: Thank you, General.

COL DAVIES: Thank you, sir.

I would say that the Air Force has a very comprehensive program for developing trial, defense, and Special Victims' Counsel up to the
very senior level. And while it may not have the name of the litigation track, in practicality, it is that in many regards.

You are going to hear from Colonel Kate Oler later today. She is the Chief Prosecutor for the Air Force. If you look at her record, between her time as a prosecutor, a defense counsel, and as a military judge, she has probably handled hundreds, well over 100 cases is my guess. And you can ask her that question.

So, the point of the experience level in the courtroom, the practice in the Air Force is, if we have a junior counsel in the courtroom, there will always be a more senior experienced counsel in the courtroom with them.

And I believe if the Panel looks carefully, they will see that the senior prosecutors and defense counsel in the Air Force actually have very extensive experience and are very qualified for the jobs that they are doing. I would hold them up, you know, to anyone in the civilian sector in the duties that they are
doing, keeping in mind, of course, that the Air
Force has to develop leaders who are going to be
able to train and supervise future judge
advocates.

So, one of the aspects of our training
is not just litigation skills, but also
leadership skills. We need to be able to develop
judge advocates in accordance with the mission
and structure of our individual Services to be
able to respond to the mission needs, which
includes military justice and criminal
prosecutions.

MR. TAYLOR: So, as leaders of your
respective schools, what kind of feedback
mechanisms do you have in place to be sure that
those prosecutors, defense counsel, and SVCs that
you turn out are actually able to employ the
skills in the courtroom and in the military
justice process that indicates that your training
needs to be tweaked a little bit or is mostly
successful or in some cases lacks the
effectiveness that you would like to have? Is
there a tight feedback mechanism that is
anecdotal, not just assessments on paper?

General Pede?

BG PEDE: Yes, we do, sir. We have
got not only the more programmatic evaluations
that we conduct here at the school. Any training
that is done is evaluated. Quite frankly, they
are very honest about what we need to fix and
what we need to stop doing or those things we
need to sustain.

Our training arms do the same thing.
They evaluate all their courses, have students
evaluated. We have processes where counsel --
well, for example, our graduate course writes
routinely about things that need to be improved
in our Corps and our practice of law. So, there
is a number of not only anecdotal mechanisms
where younger counsel will communicate their
satisfaction or dissatisfaction with programs,
but as well with programs.

If I may, sir, just go back to your
prior point and just add to Kirk's comments, I
think the Navy has got a great program. In fact, as we created our own skill-identifier program, we modeled it in part off the Navy at the time back in 2008. But, over time if you look empirically, you know, you look empirically at information, I have never seen any empirical evidence that suggests that one program is particularly better than another or that any particular jurisdiction, whether it is Toledo, San Diego, Cincinnati, is better than what we are doing, or that it is so much better that it necessitates a profound shift in how we practice law for the Army, for example. I have just never seen anything.

Quite frankly, the empirical information I have, if you just look at numbers -- and it is never the only thing you would look at -- the numbers for all the Services are powerful in terms of what we have done to get after not just sexual assault, but general crime, if you look at it. It is not perfect, but our numbers are very strong and comparatively to
other jurisdictions. So, we use that, too, in how we evaluate, sir.

COL DAVIES: Yes, sir, if I could just make a couple of comments?

First of all, all of our litigation courses include adjunct faculty from the groups or the Bench of senior litigators, trial, defense, and SVC. So, there is an immediate loop with them in terms of what we are including in the course, how we execute the course, and what we are seeing amongst the students, and identifying really who the excellent litigators are.

Second, I would say the role of the military judges is significant in the Air Force. We receive tremendous feedback from the professional development side of what the military judges are actually seeing in the courtroom.

Then, last of all, I would say our senior leadership for the JAG Corps is very engaged in overseeing the development of
litigation expertise. Within the last year or so, we have reorganized to some degree how we deploy our defense and trial counsel services into circuits, which provides additional oversight and training and feedback, to the point that you are getting at.

MR. TAYLOR: Thank you.

Captain?

CAPT LUCE: Yes, sir.

For the Coast Guard, for our trial counsel, we have feedback back to the schools. We also have our Legal Service Command, which is our largest concentration of Coast Guard attorneys in the field, they have their own internal in-house program. For each court martial, they will have a mentor that is there to observe. They do a hotwash and, then, the results of that and their lessons-learned feedback into their internal training program.

For our Special Victims' Counsel, our Program Manager has attended the courses with our SVC. We also have an apprenticeship program for
our SVCs. So, when they first begin their tours in SVC, they are working with another more experienced SVC, and they are looked to provide the feedback back through those arrangements.

MR. TAYLOR: Thank you.

Colonel?

LTCOL TYER-WITEK: Sir, at the Justice School itself, probably the No. 1 way we get feedback is through the Navy/Marine Corps Trial Judiciary. They put out kind of an Excel spreadsheet of comments of the errors that they are seeing trial and defense counsel make. We, in turn, take that spreadsheet and, then, compare it with what we are teaching and the methodology we are using. And that is how we get feedback, particularly with regard to our trial curriculum.

And I will defer to our Trial Counsel Assistance Program and Defense Counsel Assistance Program, who you will hear from later today from both the Navy and the Marine Corps, to see how they do exactly what the other Services were talking about with direct supervisor feedback
during training sessions. And I think that is
how we get after it, sir.

MR. TAYLOR: Thank you, Madam Chair.

CHAIR HOLTZMAN: Well, thank you very

much.

Admiral Tracey?

VADM TRACEY: Thank you, and thank you

all for being here.

I would like to pursue sort of three
lines of questioning, and if I could ask one of
you to answer, and everyone else can tell if you
have dramatic differences or material defenses
from that answer.

Like Judge Jones, I wasn't sure I
followed quite everything about everyone's
training and education processes. But, for a
profound change, like the Article 120 changes
that happen and would drive a need to get
everyone up-to-speed relatively quickly, what
opportunity do you have to depart from the
deliberate training methodology that you use to
make that happen relatively evenly across your
Service?

So, let's start with you, General.

BG PEDE: Ma'am, thank you.

Instantaneously, so when it is passed, we certainly can execute immediately. So, we don't teach bad law or old law. And we make it a point to track things. In fact, with the notional Military Justice Act of 2016 that is now percolating, we are having a curriculum review just in the way of anticipating. Even with the two-year -- it is argued to be a two-year implementation period -- we are looking at legislation now that is not even passed to see will that affect our curriculum.

And so, it is forward-looking, but it is also instantaneous. So, when 120 changes, we anticipate the change, we begin to teach it, and we move on.

VADM TRACEY: So, that hits the people who are coming through in the normal life cycle process. How do you hit trial and defense counsels who are in those roles at the time that
change would come?

BG PEDE: For the Army, ma'am, we have centralized push of information. We have instruction that is offered here, and oftentimes, it is provided on our JAGU. So, it is video training, for example. And then, we have our two training arms, TCAP and DCAP, that move quickly around the world, as they will tell you today, to train.

In the case of the MJ, if the Military Justice Act of 2016 comes to pass, I would anticipate, as we did in 1983 or 1969, sending around mobile training teams just on those changes to ensure that it is done in a timely, quick way.

VADM TRACEY: Anyone else who has something dramatically different?

COL DAVIES: I will add one thing and echo that. And then, our major command's mission is to organize training and equip. So, they also retain a training function for all the personnel within their commands. Whether it is on the
trial counsel side, the defense side, that would come through the Air Force Legal Operations Agency down through the supervisors of prosecution and defense counsel as well.

VADM TRACEY: Okay. Anyone else?

LTC TYER-WITEK: We had a recent example of this when the Article 32 changed to a preliminary hearing. The Judge Advocate General of the Navy, who certifies all of us as judge advocates who practice, made it mandatory that everyone, every practicing judge advocate watched this online training. So, we developed, we produced an online training over a weekend really because the change happened right over Christmas, actually, two years ago. And it was very effective and mandatory.

So, you could not conduct a hearing unless you were certified as having been trained in the new process. And it seemed to be very effective at the time, and all of us took it. And then, it is out there for a refresher as well, then, afterwards.
VADM TRACEY: Okay. Thank you.

What role do you have in the training of convening authorities, commanders, and in the leadership training courses of both enlisted and officers. I'm pretty familiar with Navy, but I don't know others.

BG PEDE: Ma'am, for the Army, we conduct a number of courses here at the school for line officers. The first is, we call it the Senior Officer Legal Orientation Course. It is a one-week course. They are here all week. These are battalion and brigade commanders who are about to assume command or have just recently assumed.

They spend five days on all practice areas with special emphasis on, of course, military justice and all of those issues related to that, ethics and everything. It is a very comprehensive course.

And then, of course, for our general officers assuming general court martial convening authority, they are required to come here, much
like the other commanders. They come for a one-day course. In fact, just this very day, we have a general officer taking command at Fort Sill, and he is here all day and he receives one-on-one, he or she receives one-on-one instruction from the faculty all day in a baseline set of topics and, then, selected topics based on where he or she might be going.

VADM TRACEY: Thank you.

COL DAVIES: Ma'am, the JAG School teaches a couple of courses for our new wing and group commanders. That is the colonel and defense special court martial convening authority level. We have the Senior Officer Legal Orientation, which is a two-day course, and we teach the command chiefs during what is called Senior Enlisted Legal Orientation. It is a two-day course.

Maxwell Air Force Base is the home of Air University. Our school is a tenant on that base. We teach different seminars and electives at Air War College, Air Command and Staff
In process right now, the Judge Advocate General has directed the development of a course for general court martial convening authorities. That will be taught in the MAJCOM arena versus at the JAG School. That is in the process of development right now.

CAPT LUCE: Admiral, our Leadership Development Center is in New London, Connecticut, along with our Coast Guard Academy. Our Coast Guard Academy Staff Judge Advocate's Office, as well as our Academy law faculty supplement the Leadership Development Center in providing training to all of our prospective commanding officers and executive officers. In addition, all of our training centers have a Staff Judge Advocate assigned to the training center that provides training on military justice.

LTCOL TYER-WITEK: As discussed before, ma'am, we offer senior officer course training for prospective commanding officers in both the Navy and the Marine Corps. We have had
other Services attend that. It is a three-day course offered in Newport, Norfolk, San Diego, and then, we take a mobile training team on the road and go to Okinawa. We have just recently done one in Imakuni, and overseas in Rhoda we had our first. So, we are going to the commands where they need the training.

VADM TRACEY: Are you invited into the Leadership Training Continuum as well?

LTC TYER-WITEK: Yes, ma'am. Yes, ma'am. Speaking of the Leadership Development Training Continuum, in the Navy we do, we are. We have a standing member of that. The JAG is the representative, or the DJAG, Admiral Hannink.

We also provide instruction at the Navy Leadership and Ethics Center. So, that is a new -- it used to be Command and Leadership School -- so, it is a new school offered only for the Navy currently, but for all Navy commanders. We provide an instructor. Either the CO or myself go over there and do about an hour-and-a-half to really sometimes three hours with the
prospective 06 major commanders, where we just have a closed-door session with the JAG and talk all of those one-on-one topics.

VADM TRACEY: Thank you.

CHAIR HOLTZMAN: Mr. Stone?

MR. STONE: Thank you.

I noticed you talk about prosecutors and defense counsel, but some comments that we have heard in other sessions are that the military judges are not familiar with the changes in the last three National Defense Authorization Acts or what is coming down the pike, and they find themselves at a loss. Are any of your Service academies regularly training the judges, too, or are they on a different track?

BG PEDE: Sir, I begin by highlighting the three-week training course that we offer here that certifies all military judges for all the Services, sir. And so, annually, we conduct that. It is the longest short course, that is kind of an oxymoron, but it is the longest course we offer, three weeks, for judges. It is
certifying.

So, they get the most up-to-date information, and it is very much hands-on, very practically-oriented, and there are certified drills of all kinds and, then, of course, academic instruction as well.

There typically wouldn't be a judge that hasn't been offered the knowledge and information. We will often see judges on the Bench who interpret the law differently, but the judges are also very good in terms of their networks, at least -- and I am sure this is across the board -- of course, no one is perfect, but I know the judges, having been on our Appellate Court, they have got an extraordinary network passing information and knowledge, and they have their own training plan. So, we offer some at the school, but they do their own training as well to maintain currency in the law.

COL DAVIES: Sir, at the Air Force Academy School we host every other year the Joint Military Judges Course. It is open across the
Services to come for a week of refresher training for judges. The Judges' Leadership does the curriculum for that course. We don't; as the JAG School, we are the host, but I know that they have that course every other year. It consists of state, you know, platform instruction and seminars as well.

CAPT LUCE: Yes, sir. Coast Guard military judges attend the Army Judge Advocate School for the Military Judge Course. And then, we also make available annual training opportunities for our refresher training.

LTCOL TYER-WITEK: And we alternate the Justice School or the Department of the Navy alternates with the Air Force. In the off-years that they do not provide that annual training, we provide that annual training. So, there is an annual training every year, in addition to the basic course, which all of the military judges in the Sea Services attend.

MR. STONE: In the annual trainings, just roughly, what percentage of the judges can
take a break, because they don't have a trial and
they are not busy, to fly in those kinds of
annual trainings? Is it 10 percent of the
sitting judges? Is it 50 percent? Guess. Can
you give an idea?

COL DAVIES: Based on the numbers I
see at the school -- you know, it would be hard
to guess because I don't know how many judges
there are in the other Services -- but I would
say it is over 70 percent, would be my guess.

BG PEDE: For the Army, I would put it
even higher. These aren't ad-hoc training
events, sir. So, they are well-planned, and the
Chief Trial Judge mandates their attendance,
absent some family emergency or something
exceptional. So, from the standpoint I think of
probably most of the Services, it would be rare
to be missing such an event since they are one,
two, three times a year.

LTCOL TYER-WITEK: I concur with that,
sir, and as said, they are well-attended; plus,
they shut down the docket for that week, which
allows, then, for the government and the defense
counsel to do their training that week as well.
And it has been very convenient.

CAPT LUCE: Yes, sir, and the same for
the Coast Guard.

MR. STONE: The other question I have,
I don't know if this is too much detail, but you
will tell me if there is a different speaker
later who will tell me. One of the things that I
think I haven't heard much about in terms of
training -- and you did mention that you train
convening authorities -- in paramilitary U.S.
organizations, and they are not strictly
paramilitary, but organizations like the FBI and
the Bureau of Prisons, if one of their employees
is charged with a sexual assault on somebody and
the employee is acquitted but took the Fifth
Amendment and refused to discuss it on the stand,
that employee is probably going to be fired from
their job, despite the fact that they were
acquitted, because it still reflects on their
fitness for duty and the morale of the
organization and the way they are able to keep functioning.

The military certainly has that same concern, and I guess one of the questions I'm asking you is, the convening authority, is there a course that you give them on even after an acquittal what their options and course of behavior is, despite the fact that a person might be acquitted, because they are trying to do their mission, which is to have a cohesive unit?

I guess I would like to hear if any of you, any of the Services, teach that kind of course.

BG PEDE: We don't teach a course specifically in the Army on that subject, sir, but I can offer a couple of observations, just based on experience, as I am sure can the other panel members.

It would rest likely not with the convening authority, the issues of what needs to be done to make sure somebody, after say an acquittal or even somebody who survives a
separation board and is retained. There is always that notion that they are going to have trouble with the unit.

So, really, the onus is on the unit leaders at the lowest level to create an environment where the soldier can come back and work successfully. It is more often than not that we would transfer such a soldier, I think, just to get him into a new environment.

But the conversations are usually at the lowest level with the judge advocate servicing that unit, that brigade, for example, in the Army, the Staff Judge Advocate. Acquittals are always an emotional event, so are convictions, but acquittals are a little bit more challenging because of all that goes with it.

And so, the greatest leadership challenge is at the unit level. I know of no course that would teach that specifically, but I know, having done it, that the first phone call you make, is to the company commander in the Army and say, "He's coming back, and this is what
you're going to have to do. You've got to create an environment, so we don't have continuing issues." The best thing is to send him to another company in the battalion or elsewhere on the installation or, in fact, away from that installation.

So, it is a challenge, but it is something that I have historically had to address with commanders over time.

MR. STONE: Any of the other Services teach anything like that?

COL DAVIES: Yes, sir. In the Senior Officer Leader Orientation, there is one lecture on post-trial that gets to sort of other issues. One of the things that is discussed is, if the accused is acquitted, some of the issues the commander may be facing.

And it is addressed -- you know, an acquittal doesn't always mean that people are unhappy about the result. The experience shows that some in the units are sort of supporting the person who is being court-martialed and others
may think the person should have been found guilty. So, it is a complicated matter for the unit. It isn't a separate course, but it is included briefly in that lecture.

MR. STONE: As you point out, that is also a complicated matter for the victim.

COL DAVIES: It is, and I was going to get to that point. But, yes, and especially if the accused and the victim are in the same unit. All of us probably have had experience in that regard.

Because of the Air Force's organization, it is a little different how you manage that because we don't tend to be at such large installations where it is easy to move someone. But one of the options would be to PCS one or both of the parties if that was better for them and for the unit itself.

MR. STONE: Is that a regular practice? I thought it was really tough for people to get PCS.

COL DAVIES: Well, first of all, you
have the expedited transfer rules for victims. The units can also, at the request of the victim, request an expedited transfer of the accused. I am aware of one case where that has happened. It is not routine. I think if you look statistically, expedited transfer is not used that often, even for victims themselves.

MR. STONE: In the case you are talking, was the accused acquitted and they were able to request it and get him transferred or her transferred?

COL DAVIES: The expedited transfer happened before trial.

MR. STONE: I see.

COL DAVIES: He was ultimately acquitted, but the expedited transfer was before trial.

MR. STONE: And it stayed in place? He didn't, then, transfer back?

COL DAVIES: Correct. Well, to my knowledge. I have since moved, and so, I really can't comment on that.
MR. STONE: Do the other Services have experience either with the training in that or real experiences?

CAPT LUCE: Yes, sir. The Coast Guard, based on a relatively small number of cases, it is usually one or two instances in a year. Those are typically worked specifically with the Staff Judge Advocate, the convening authority, along with our Staff Judge Advocate for the Personnel Service Center. And then, they are able to connect with either the administrative separation process or with the assignment officers regarding assignment questions.

LTCOL TYER-WITEK: And we have the Staff Judge Advocate training, and so, we offer an Advanced Staff Judge Advocate Course that really targets judge advocates who are serving at their first flag or general officer or command. And those are usually where they are getting these questions from their subordinate convening authorities if, you know, how do you handle this?
Part of their training really is programmatic. How do you programmatically manage a SAPR program throughout a general officer command?

And then, secondarily, we offer -- the Senior Officer Course is a scenario-based course. So, three days of scenarios. One of the scenarios is a sexual assault scenario, and it usually takes about four or five hours to work through. We really rely on the experience of the people who are in the course, the students themselves that talk about their experiences with these cases.

One of the most probably robust conversations we have in those courses -- and I'm an instructor in those; in fact, doing that in the next couple of weeks -- is what do you do post-acquittal, because we teach them you've got the statutory right to protect the victim's rights and you also have the obligation to protect the constitutional rights of the accused. "So, how are you going to manage that, CO?"
And they really talk through that and how they are going to put processes in place. They have a ton of resources available to them. They have the SARC and the members of the chain of command. And so, they start that dialog there, whether they bring it on and put it into effect their commands. We hope that they do, but we at least start it there.

MR. STONE: I think I am a little confused about what constitutional right any Service person has to a particular billet that they are in.

LTCOL TYER-WITEK: Well, I was referring to the convening authority, you know, if the accused is in their command, they have the responsibility of protecting the constitutional rights of that accused Service member, including making sure that they have time to see a defense counsel and all those things.

But you can see where the convening authority has kind of dual responsibilities to those two members, and it is very difficult. It
is a kind of cognitive dissonance to manage both of those things for those Service members.

MR. STONE: I was focusing on the post-trial period, which is, as I say, the FBI --

LTCol TYER-WITEK: Yes, sir.

MR. STONE: -- and prisons handle very differently. It is much easier for them to separate somebody. So, that is why I was curious to know whether that kind of thing happens.

LTCol TYER-WITEK: Yes, sir.

And then, we have, all the Services have an administrative separation process that, then, governs. There are certain criteria for separating someone in a situation, but separate from the court-martial process. So, that is what we would teach the SJAs, is you may have a Service member who is acquitted, but has done other misconduct. And if the convening authority really feels like that person needs to be separated, they would use that administrative process, and the SJA would help them through that.
MR. STONE: If you know, and maybe you

don't --

CHAIR HOLTZMAN: Okay, but --

MR. STONE: I will make this the last

question, if that is all right?

CHAIR HOLTZMAN: Maybe you could ask

it afterwards because we are --

MR. STONE: Okay.

CHAIR HOLTZMAN: -- about an hour

late, and we have got a whole long day.

Just a quick question that I have

about appellate training, one of the things that

we learned recently was that, with regard to the

Special Victims' Counsel, there has been a lot of

training for the trials, which has been very

important. But now the trials are getting to the

appellate level. And the question of the role of

the SVC and a victim at the appellate level is

now being raised because that is where we are in

this process. I just wonder whether this has

been addressed in any of the training programs

that you have.
BG PEDE: From the Army's perspective, ma'am, it is still a work-in-progress and I think will be for some years, honestly. We have two Appellate Divisions, Government and Defense. We do not yet have, and I don't know that we will have, a separate Appellate Division for Special Victims' Counsel or the third party in the courtroom.

In terms of training, the appellate work now being done for SVCs is being done out of the Program Office. So, I would say it is sketchy at this point, appellate-level training. However, I can tell you that both government and appellate defense training is robust from purely an appellate standpoint.

The work thus far for SVCs, however, at the appellate level has been mostly in the writ category. And so, because it is still formative my suspicion is training requirements will simply develop over time, because you would argue writs don't necessarily require the same level as a petition for a full record of trial
and conviction. So, it is still formative, ma'am.

CHAIR HOLTZMAN: So, we should stay tuned?

BG PEDE: Stay tuned.

CHAIR HOLTZMAN: Colonel?

COL DAVIES: Yes, ma'am.

Colonel deCamara can talk later about the organization of how we are handling appellate SVC issues. In terms of our JAG School, with Mr. Stout, we have been discussing this, but, to date, have made no new courses or specific changes to our curriculum, but it is under consideration.

CHAIR HOLTZMAN: Thank you.

CAPT LUCE: Yes, ma'am.

I checked with our SVC Program Manager before coming down here. We did send SVCs to appellate advocacy training.

LTC TYER-WITEK: And we annually review our curriculums for the Board of Advisors' meeting, and we are meeting in June. There is a
proposal to institute a new course for appellate
advocacy. So, stay tuned as well for that.

CHAIR HOLTZMAN: That will include the
SVC?

LTCOL TYER-WITEK: Yes, ma'am.

CHAIR HOLTZMAN: Thank you very much.

Thank you, all of you, for your
excellent presentations. We really value that
you took the time to come and be with us today.

So, I think we will take a five-minute
break.

(Whereupon, the above-entitled matter
went off the record at 10:42 a.m. and resumed at
10:50 a.m.)

CHAIR HOLTZMAN: I think we are ready
to begin.

I want to welcome the members of this
panel which focuses on the overview of training
and experience of attorneys prosecuting sexual
assault cases.

We will begin with Colonel Katherine
Oler, U.S. Air Force, Chief, Government Trial and
Appellate Counsel Division.

Colonel Oler, thank you very much for coming.

COL OLER: Thank you, Madam Chair.

Thank you.

Madam Chair, Distinguished Members of the Panel, good morning.

I am Colonel Kate Oler. I am the Air Force's Chief Prosecutor and Chief Government Appellate Counsel.

Thank you for the opportunity to speak with you today regarding training and experience that prosecutors have when addressing sexual assault cases.

General Berney has continuously emphasized the importance of the JAG Corps' criminal litigation position and has placed experienced, well-trained JAGs into these critical jobs. In fact, he has recently increased the size of the senior trial counsel corps by six prosecutors, starting in the summer of 2016.
In terms of the experience of the trial counsel who are prosecuting such sexual assault cases, there are two categories of counsel that I would like to briefly address. There is the first chair counsel and, then, the second chair counsel, because those counsel have different levels of experience.

The first chair prosecutors on sexual assault cases have extensive experience in handling sexual assault prosecution. In fact, in almost every Article 120 case in the Air Force the first chair prosecutor will be a senior trial counsel.

The career path of a senior trial counsel begins much like that of any other judge advocate, and it begins at JSOC, which is our 10-week basic course where our new JAGs get immersion in civil law matters, but, in particular, they get immersion in military justice as well.

A senior trial counselor, a future senior trial counsel will, then, go on to serve
as a base-level prosecutor and a base-level assistant staff judge advocate. Typically, what I see in the senior trial counsel that come to work for me is that they have one or two assignments as a base-level prosecutor in their chain of assignment strings before becoming a senior trial counsel.

During their time at the base office, they become trial-certified, which means that the Judge Advocate General has found that they are competent in fundamental litigation skills and are qualified to serve as independent trial counsel on a general court-martial.

So, during this one, maybe two, assignments at the Base Legal Office, the trial counsel become involved in military justice. They review evidence. They interview witnesses. They draft charges. And importantly, they prosecute cases.

The next step in a senior trial counsel's career path is almost always work as an area defense counsel. In the Air Force, area
defense counsel are selected on a worldwide best-qualified basis. What that means is that the very best litigators out of the Base Legal Office are selected to serve as area defense counsel.

Ultimately, there is not a requirement to have served as an area defense counsel before coming to work as a senior trial counsel, but I can tell you the snapshot in time right now in terms of our practice, all of my senior trial counsel except one has been an area defense counsel. So, while it is not a requirement, it is very close to one.

And, of course, that is fundamentally important, that defense work, not just because they gain additional experience as litigators, but because they gain that perspective that comes with serving in a defense role, and that inherently makes them better prosecutors.

So, once they become a senior trial counsel, which is typically, although not always, directly after the area defense counsel tour, they come into the Senior Trial Counsel Billet.
with between four and seven years of experience in litigation.

They are hand-picked by me, by my Chief Senior Trial Counsel, and by the Circuit Chiefs, to come into these roles, of course, with coordination through our Assignment Office.

There is a lot of dialog that takes place. And ultimately, the Judge Advocate General decides whether to assign members as senior trial counsel.

So, it is an exceptionally-talented group of prosecutors. Within that talented group, there is a subset, and that subset is the Special Victims' Unit. Those are a subset of the Senior Trial Counsel Corps that are especially qualified, trained, and talented in prosecuting cases that involve special victims, so cases that involve adult sexual assault, child sexual and physical abuse, domestic violence, and homicide cases.

In this SVU, currently, we have 11 SVU prosecutors in the Senior Trial Counsel Corps.
They are detailed almost exclusively to prosecute cases that involve special victims.

There was a map that was just up until about two seconds ago that I would to refer to. Thank you. And it relates to the construct that we have moved to in the Air Force, and it is a circuit construct.

You can see the world is divided into five judicial circuits, three in the continental United States, one in Europe, and one in Asia. Each of those circuits, in terms of the prosecution function, is headed up by a Chief Senior Trial Counsel. That Chief is a major, as opposed to a captain, and they have extensive litigation experience.

They have all served as area defense counsel. They have all served as senior trial counsel. They are all designated as members of the Special Victims' Unit, and their job is to supervise and mentor the prosecutors who work for them. But, in addition, they try cases, and they try the cases, you can imagine, that involve --
it is almost exclusively special victims' cases
and complex special victims' cases that they
prosecute.

So, these prosecutors that I have
talked about, the senior trial counsel, the SVU,
and the Chiefs, they all receive extensive
training throughout the course of their career in
order to become proficient in the work, and the
important work, that they do.

Colonel Davies provided a handout that
summarizes the training that the litigation
positions in the JAG Corps receive throughout the
course of a career, whether it is defense
training, trial training, military judge
training, Special Victims' Counsel training. I
would refer you all to that as an excellent
summary of the training that Air Force litigators
receive during the course of their career.

So, I have talked about first chair
prosecutors. What about second chair
prosecutors? Because always in every case we
have at least two prosecutors on a trial,
sometimes three in a higher-level, more complex case, but that is the exception. It is almost always two.

So, the second chair prosecutors are JAGs from the Base Legal Office. While a judge advocate who has achieved certification is legally permitted to sit as trial counsel in a general court martial, it is Air Force practice to assign a senior trial counsel to these cases. For example, in calendar year 2015, for the sexual assault cases that we prosecuted in the Air Force, nearly 90 percent of the time a senior trial counsel was assigned to sit first chair and, then, someone from the Base Legal Office would sit second chair.

The small percentage of cases where a senior trial counsel isn't assigned as the first chair would involve a situation where, for instance, a member of the Base Legal Office like the Deputy Staff Judge Advocate had substantial background and experience in criminal litigation and was able to sit first chair on that
prosecution. There is never a situation where we send an inexperienced counsel in first chair on these types of cases. So, bottom line, we have experienced, trained prosecutors leading sexual assault prosecutions.

And these prosecutors are continuously evaluated, both by me, by the Chief Senior Trial Counsel, who is also in Washington, D.C., and by those circuit chiefs that you can see on the map that supervise the people, the prosecutors, that work for them.

This evaluation is done in a couple of different ways. The first way that I would like to highlight is through case reports. Every time the senior trial counsel travels to prosecute a case, after that case is over, they complete a case report which lays out the facts, the underlying facts, about the case. It lays out witnesses that testified, unique issues that came up, motions that were raised, how they were resolved, and expert witnesses that may or may not have testified. It is a very comprehensive
overview of what happens during trial. We use
these case reports to train and to have
conversations with the prosecutors about how the
trial went.

Additionally, in the circuit
construct, we have Chiefs. Like I said before,
those Chiefs are responsible for, of course,
prosecuting complex cases, but they are also
officers, leaders, and supervisors. Inherent in
that responsibility is making sure that the
people who work for them are doing everything
they can to zealously represent the United States
during the court-martial process.

And so, routinely, they will observe
their subordinate senior trial counsel in court
in order to evaluate performance. And sometimes
on the right case, they will sit first chair with
their subordinate as second chair, so that they
can actually try a court martial with their
subordinate.

Additionally, we routinely solicit and
receive reports from military judges, staff judge
advocates, and other practitioners in the field regarding the performance of our senior trial counsel.

The Air Force JAG Corps has continued to focus on training, both received and provided by senior trial counsel. And so, I am going to talk briefly about two different types of training, the training that the prosecutors receive, but also the training that they provide, and both are very, very important.

So, in calendar year 2015, the Senior Trial Counsel Corps received more than 900 hours of sexual assault and litigation training during the course of that year. The training came from a variety of different sources: from the Air Force JAG School, from sister Service JAG schools and courses, but also from outside organizations like the National District Attorneys Association, the National Center for Missing and Exploited Children. So, they have received an extensive amount of training, and it is, and continues to be, a focus area for us.
They have also, I think equally important, they have provided an extensive amount of training. And they have provided that training to military justice practitioners in the field, base-level prosecutors. In calendar year 2015, they provided more than 2100 man-hours of training to the field, both to base-level Assistant Staff Judge Advocates, paralegals, and other members of the organizations in the Air Force.

There are a couple of changes, and I will hit them very quickly, that the Air Force has implemented that I think will encourage and enhance the training that is received and provided.

One that I mentioned at the beginning of my remarks is that General Berney has authorized six additional prosecution billets to the Senior Trial Counsel Corps, starting in the summer of 2016. Now, as you can imagine, those six additional billets will make a big difference for the way that we do business in terms of a lot
of things: in terms of the way that we prepare
cases for trial, the amount of time our
prosecutors can spend on the front-end getting a
complicated case ready to go to trial, but,
additionally, it matters in terms of training, in
terms of the time that they have to train and to
be trained.

And the other change that we have seen
in the Air Force that will facilitate increased
training is our move to a circuit construct. So,
this allows prosecutors to work more closely with
specific legal offices that are within their
geographic region, and relationships between the
local offices develop with the prosecution team.
And so, that increases the training and the
opportunity for dialog that takes place between
those offices and those prosecutors.

It further allows the Chief Senior
Trial Counsel and the senior trial counsel that
worked for that Chief to continue their work in
partnering with Base Legal Offices even before a
trial, even before charges in a trial are
preferred, at the investigative stage, to get involved early, to assist with drafting charges, evidence marshaling, witness interviews, and reviewing evidence.

The training and experience of prosecutors are priorities in the Air Force JAG Corps, and there are focus areas. We have an exceptional team of senior trial counsel who are doing an exceptional job prosecuting sexual assault cases.

Thank you for the opportunity to speak today, and I look forward to your questions.

CHAIR HOLTZMAN: Thank you very, very much, Colonel.

We will next hear from Commander Michael Luken, U.S. Navy, Chief, Trial Counsel Assistance Program.

Commander, thank you very much for appearing. We look forward to your testimony.

CDR LUKEN: Thank you, Madam Chairman, Distinguished Members.

To go straight to the identified
questions for this panel, I will provide a brief summary of the experience level and the training that our trial counsel complete for consideration for them to be detailed to a sexual assault case or a special victim crime type of case.

At each of our nine Regional Legal Service Offices, there is a Senior Trial Counsel who is an 04, lieutenant commander, or an 05, a commander who is also part of our Military Justice Career Track. Based on their experience, training, and education, they are screened and selected into this track or they are selected through detailing process to be able to lead, manage, and supervise corps prosecutors in prosecuting cases.

These Senior Trial Counsel detail all cases to corps attorneys based on that corps attorney's ability, aptitude, caseload, and their experience. The Senior Trial Counsel is responsible for supervising the corps attorney throughout the case.

Each office has a requisite
supervisory counsel overseeing litigation of our special victim crimes. For special victim crimes, including sexual assault cases, a corps attorney is not detailed unless they have the professional ability to competently prosecute the case and, if there is a case requiring even greater expertise than what is available locally, they reach out to our office, the TCAP.

Since the Response Systems Panel evaluated counsel training in the report of June 2014, there is a greater focus on the effort as to special victim crime training. Training for special victim crimes is prioritized to the corps counsel and is attended earlier on in their billet as a corps counsel.

We have also joined training with NCIS, which has been outstanding. We have prosecutors and agents going through the same training to collaborate and better understand what could be challenges to the investigation as well as to the prosecution process.

Secondly, the training tone has
changed from a victim-centric mindset to an accused-centric. What did the accused do through the assault vice? What did the victim do or not do during the assault?

The training has also shifted to address the competencies of victim interviews. Not only the means of how the interview is actually captured, whether it be through the results of trial, a summary, written, or video, but also what questions are asked and how they are asked to get more of what we call a sensory-focused interview.

This interviewing technique often addresses or explains what some refer to as the counterintuitive behavior. The way investigators take statements and the way prosecutors work with the victims now import perception and sensory techniques during the interviews and interactions with the victim.

Shifting now to our training and evaluation of trial counsel who prosecute sexual assault cases, the Navy has certified each office
as SVIP-certified to prosecute cases. With the Military Justice Litigation Career Track, senior trial counsel being an 04 and 05 appointed to that office. And the corps counsel has attended certain courses; we have certified the office as competent to prosecute special victim crimes.

In the last six months, we have identified that we are going to shift from that to add in more of a -- we are directing a structure right now to join not only the office certification model, but also individual corps counsel model.

The individual certification would involve over 75 hours of specialized trials. For certification, the corps counsel would have to attend one DoD SVIP type of course. The Navy does the Prosecution Special Victim Crimes and, also, does Prosecuting Alcohol-Facilitated Sexual Assaults. Those interchange each year.

We now better coordinate with the United States Marine Corps TCAP to join our highly-qualified experts in development of these
trainings. We send our people to their SVIP
courses, and they send their people to our
courses. This coordination offers more options
for trial counsel to attend at various times and
places throughout the year. The DoD course, this
SVIP course, could also be substituted for a
civilian course focused on special victim crimes.

Also, part of the certification for
the individual is they would have to attend one
of the two FLETC courses which we work with NCIS,
the NCIS Advanced Adult Sexual Assault
Investigations Training and the NCIS Advanced
Family Sexual Violence Training Program.

Next, the counsel to be SVIP-
certified, would have to be at least detailed to
at least two contested SVIP-type or special-
victim-crime-type cases.

And finally, they would have to
complete five webinars that are identified by
TCAP as being special victim crime type of
training.

Once the counsel completes the
training continuum, they request SVIP
certification through their training command,
which is screened again for aptitude and
competency of the individual counsel.

Next to ongoing training, TCAP
cconducts a Targeted Mobile Training Team Course
for each trial department. I believe this was
one of the questions that was discussed at the
last session of how do we get at issues that we
catch early on, relatively early in the process.

Our three-day training program, we do
that by traveling to each RLSO every year. Over
the three days we focus on different tactical
training issues relating to special victim
crimes. A couple of examples, we train to
include strategic charging of special victim
crimes, updates and shifts in law, and working
with victims, adult and child.

For one session, I invite one sexual
assault survivor who I worked with on a previous
case. We take the opportunity for trial counsel
and paralegals to hear her experience with the
Military Justice System, what worked and what
didn't worked through that process, and dealing
with investigators, and, of course, having to
deal with me. This provides our trial counsel
insights as to a survivor's perspective.

The prosecutors are able to ask
questions that would not be asked survivors
during the regular court-martial process. So,
this gives them good insight into how they can be
better prosecutors.

In summary, we seek to have a robust
training program for our counsel. We have
balanced that with the fact that with experience
comes better prosecutions.

Again, thank you for inviting me here
today, and I look forward to your questions.

CHAIR HOLTZMAN: Thank you very much,
Commander.

Our next presenter will be Lieutenant
Colonel Bret Batdorff, U.S. Army, Chief, Trial
Counsel Assistance Program.

Colonel, thank you very much for
coming. We look forward to your presentation.

COL BATDORFF: Madam Chair, other
Distinguished Members, good morning and welcome
to my regimental home.

I am Lieutenant Colonel Bret Batdorff,
and it is my honor to address this Panel again.
I am still the Chief of the Army's Trial Counsel
Assistance Program, or TCAP.

TCAP's overarching mission in the Army
is to provide support and resources to the
prosecutorial function in the Army. We
accomplish that mission in many different ways.

Given the topic on today's agenda -- that is,
training -- there's a couple of ways I would like
to specifically focus and briefly highlight you
on.

First, TCAP offers approximately 40
different continuing legal education training
opportunities for military prosecutors and
government paralegals each year.

Next, the Army's TCAP also manages the
Army's Special Victim Prosecution Program. At
last month's meeting of the JPP highlighted for you the many additional personnel and resources that had been dedicated to the Army's Special Victim Prosecution Program, including the addition of in recent years 25 Special Victim Prosecutors, 24 Special Victim Paralegal NCOs, as well as most recently 24 Special Victim Witness Liaisons, each of whom fall under my supervision at TCAP and are exclusively dedicated to ensuring that every allegation of sexual assault, child abuse, and intimate partner violence is properly investigated and, when warranted, properly charged and prosecuted.

Before getting into the specifics of what we train, who we train, and how we train, I would like to briefly pause and let you know who it is within our organization who is planning and organizing and conducting the training. So, at TCAP Headquarters we are manned with seven judge advocates, three civilian attorneys, one Senior Paralegal NCO, and one Senior Civilian Special Victim Witness Liaison. All of those personnel
are involved in planning and executing our
approximately 40 training events per year.

Each of the seven judge advocates on
my staff were hand-selected by our senior leaders
in the Army JAG Corps because of their
demonstrated proficiency and expertise as
criminal litigators. All of them are former
trial counsel, defense counsel, and I actually
have now one former Special Victim Counsel. He
was one of the first SVCs in the Army and is now
a training officer at Army's TCAP.

We also have three senior civilian
attorneys. Each of these three civilian
attorneys were career civilian prosecutors prior
to joining our staff. All three of them
specialize in the field of special victim
prosecutors as civilian prosecutors.

Recognizing the need to provide
dedicated special victim witness support to the
prosecution team, again, we added the Special
Victim Witness Liaison Program Manager to my
staff just last year, and that is Ms. Christa
Thompson who addressed this Panel last month.

And our final member of our team was our Special Victim NCO Paralegal Program Manager.

Together these seven officers, four civilians, one NCO, coordinate and train all of our events each year. While all the members of our team make significant contributions to the planning and execution of our training events, I would like to pause to momentarily echo some of the comments from the last panel regarding the significant contributions made to our career prosecutors on our staff.

Since their hiring, they have injected a more-than-healthy dose of outside wisdom and experience. I have personally attended many military- and civilian-sponsored continuing legal education events, and the training events planned and executed by these three civilians is among the best and most practical that I have ever attended in my experience as an attorney.

Much like the testimony of the XO at the Naval Justice School at the last Board up
here, they have turned our training program on
its head. We now use kind of a hybrid between
the NITA model of our advocacy training. That is
also what they teach at the National Advocacy
Center, and the National District Attorneys
Association, it is very similar. We have kind of
molded their various approaches to training
counsel. We now do that as opposed to the more
militaristic training that we often get down at
our line units.

Also, TCAP, again, supervises the 25
SVPs, 24 SVNCOs, and 24 SVWLs. This group of 70
professionals are geographically distributed
across the Army's installations worldwide. I
mention this because TCAP uses each of its SVPs
as trainers because, as identified by TJAG, our
SVPs have two primary missions. Again, their
first mission is to make sure that every
allegation, every investigation of a special
victim crime is properly investigated, properly
charged, and properly prosecuted, when warranted.
But, second, and I consider it a "1(b)" more than
a "2", is to train, train, train, train and
mentor the younger trial counsel and the younger
senior trial counsel at their installations.

    We also frequently bring them to our
TCAP training events because they have that
credibility. They look at us and they say,
"Well, you worked up at Washington, D.C. You
don't do this every day." So, bringing the SVPs
who are down there, if you will, in the trenches
trying these cases, interviewing the victims,
working with them, brings credibility also to our
training.

    Much like the Air Force setup, very
similar, we have trial counsel, many of whom are
very junior. We have senior trial counsel who
are a bit more experienced, and then, we have the
SVPs. That is kind of hierarchy, if you will, of
our trial counsel experience.

    That is who conducts our training and
plans our training, who it is that we are
training, what we are training, and how we are
training them. We primarily train junior trial
counsel, our senior trial counsel, and, also, our
Special Victim Prosecutors. We also provide some
training -- this is a recent change in the last
year -- we have included our paralegals and our
Victim Witness Liaisons in a lot of our trainings
as well.

Our training events range from our
very basic New Prosecutor Course to our Effective
Strategies for Members or Jury Cases, to our
Effective Strategies for Sexual Assault
Prosecution Course, our Complex Litigation
Course, our Senior Trial Counsel Course, and our
Child Abuse Prosecution Course.

Most of our courses are based on the
use of fact patterns and practical exercise, and
all of our fact patterns and practical exercises
involve a special victim component to it, usually
adult sexual assault and usually an alcohol-
facilitated sexual assault fact pattern.

Our premier course for the last few
years that we started a couple of years ago is
the Sexual Assault Trial Advocacy Course. That
is a two-week advocacy course focused exclusively on prosecuting and defending sexual assault cases. Last year we conducted it at Baylor Law School. This year it will be at the University of Utah Law School.

Although TCAP is responsible for organizing it and putting it on, it is actually a joint training that we do with the Defense Counsel Assistance Program. So, we bring in the trial counsel and the defense counsel, and they train together on things such as interviewing victims, drafting 412 motions, conducting 513 motions. Actually, we do hearings and trials and things like that.

And for the first time this coming July, we are also inviting the Army SVCs to that training. So, they will also be participating in the victim interview exercises and the 412 hearings that we do.

We also contract with, although we do most of the planning, we contract with several civilian agencies to conduct some of the training
for us. For example, we contract with the CornerHouse Forensic Interviewing organization out of Minnesota, and they provide two week-long courses for our trial counsel on forensic interviewing, defending a forensic interview and trial, if it was challenged by defense.

We also contract with the National Center for Missing and Exploited Children to provide two week-long courses on the prosecution and investigation of online exploitation and online sex offenses.

Those are all of our trainings offered to all of our trial counsel and SVPs. We also work closely with the JAG School in order to mesh our training, to make sure that we are complementing and not repeating the training. So, all the trial counsel will through the OBC that General Pede talked about. And then, they may go to another job such as legal assistants. But, then, when they start their trial jobs, they will start attending our training. And again, we work very closely with the JAG School to make
sure that our training are meshed and make sense.

One thing, I wanted to pause here, ma'am, Admiral Tracey. You asked General Pede regarding if there is a new development in the law, whether it is a statute or case law. Every month we put out two or three what we call TCAP Expresses. I often joke because TCAP Express will never be confused with The Harvard Law Review. That is not its intent. Its intent is to rapidly notify all of the trial counsel, "Hey, this statute was just passed" or "This DoD instruction was just signed. You need to be aware of that." It is, my direction to my counsel when we are drafting this, no more than two pages because trial counsel are busy people, and that is really all the time they have to digest. But they can, then, file it away later and use that.

Another way, ma'am, that is not really my lane, but our military judges often conduct what they call gateway sessions. It varies from judge to judge. Some only do it once a year, but
some do it very frequently, like once a month.
And the judge will actually use that opportunity
to train trial and defense counsel about recent
changes to the law, ma'am.

Finally, I would like to highlight for
you the training that our SVPs go through prior
to, or shortly after they become SVPs.

First, they have to attend the NDAA's,
the National District Attorneys' Association's
Career Prosecutor Course. It is usually in San
Diego. This year it is back in Charleston, where
I went through it several years ago.

Second, they have to attend our SATAC,
which I talked about a moment ago.

Third, they have to attend our SVP
Course, which we hold twice a year, July and
December. During that time, we do a deeper dive.
We bring in experts to talk about victim
behaviors. We bring in experts to talk about
forensic analysis and things like that.

I have also required -- because now we
have had the SVP program in place for a little
while and I have noticed that we have had some
who have been suffering from vicarious trauma and
secondary trauma -- so now, our last couple of
iterations of our SVP Course, I mandate that we
bring in an outsider, a civilian expert to talk
about the impacts and recognize when you are
suffering from vicarious trauma from being
involved, spending 100 percent of your time
investigating and prosecuting special victim
cases.

Then, finally, they are required to do
a two-week on-the-job training at a local DA's
office, preferably at an SVU, a Special Victim
Unit.

So, as I mentioned, an SVP must be
involved in every investigation and prosecution
of a special victim case. Sometimes that means
that they are detailed to the case. They are
actually the lead prosecutor. Sometimes it means
that they are the second chair in the case. And
in some cases they will just be consulting on the
case, and they will be directly helping the
detailed trial counsel. So, every prosecution of a special victim case in the Army will have the involvement at different levels of a Special Victim Prosecutor who has all this training prior to or shortly after taking the job.

In summary, we have made substantial progress in recent years in creating a comprehensive spectrum of training for our prosecutors that mirrors from a new progression from a new prosecutor to a senior trial counsel, to a Special Victims' Prosecutor. And we do so through the use of our organic TCAP assets, our civilian expert attorneys, our SVPs, and some outside civilian agencies. We have also recently started including our paralegals and BWOs in our trainings because we firmly believe that they are going to be out there investigating and prosecuting these cases together; they need to be trained together as well.

All these changes are transforming our investigation and prosecution of our cases, especially our special victim cases, in a
profoundly positive manner.

Thank you for your time. I look forward to your questions.

CHAIR HOLTZMAN: Thank you very much, Colonel.

Our next presenter is Major Jesse Schweig, U.S. Marine Corps, Officer-in-Charge, Trial Counsel Assistance Program.

Major, we are pleased to hear from you now. Welcome.

MAJ SCHWEIG: Good morning, Madam Chair. Good morning, Distinguished Panel Members.

First, my apologies to Colonel Oler. I inadvertently shut down your presentation while you were speaking. The good news is I know the clicker works, so I can get through this.

(Laughter.)

MAJ SCHWEIG: So, we at the Marine TCAP Collective, we are bored by things that are boring and interested in things that are interesting, which is why I brought you a lot of
pictures, which will also spare you some
additional words on my part.

First, I will briefly go through our
Trial Counsel Continuum. You have an entry-level
trial counsel, typically an 02 to 03, that has
attended the basic lawyer course at The Naval
Justice School. From there, they progress to
being a general court-martial-qualified trial
counsel, typically an 03, sometimes an 04. And
really, this means that they have had six months
in the billet and have been designated in writing
by someone who says you are competent to be
involved in a general court-martial.

From there, we progress to what we
call a Special Victims' Trial Counsel, which has
an unfortunate resemblance to the SVC. But, for
our purposes, it is a prosecutor that does
special victim cases. It is an 03 to 04 that has
contested at least one special victim case and
has also attended an Intermediate Trial Advocacy
Course.

From there, we go to our senior trial
counsel, which is an 04 and is a person who possesses in the Marine Corps a 4409 designation, which means they have obtained their master's in military justice, usually at the TJAGLCS, this school, although occasionally also through a civilian institution.

And finally, we progress to our regional trial counsel, which is an 05 level. They are hand-selected at the Headquarters level for those billets, and they will also have a 4409 master military justice designation.

And I'm going to just take a second and focus directly on our Special Victims' Counsel. They have been certified in writing by their regional officer-in-charge. They have a minimum six months as a trial counsel or 18 months as a defense counsel. They have tried a special victim case as an assistant counsel, and they have attended the Intermediate Trial Advocacy Course we discussed earlier.

Now, for that course, if you are picturing a large, sparsely-furnished room with a
bunch of people in it, you're not far from the truth. In fact, there's an example. This was our training venue from Camp Lejeune which took place just a couple of months ago. And I am going to run through a few of the things we do there.

First, we pick the most highly-qualified instructors we can find. For this training iteration, we used a mock case, which was sort of a mixed sexual assault with elements of strangulation as well.

And one of our instructors, as pictured here, is Ms. Gael Strack, who is one of the foremost strangulation-teaching experts in the country. She worked at the San Diego District Attorney's Office and became interested in the subject of strangulation and turned herself into an expert, and now teaches a lot of people how to do these things.

Additionally, we can never forget --


You don't mean strangle.
(Laughter.)

MAJ SCHWEIG: I probably said something which will be reflected in the transcript, very unfortunately.

(Laughter.)

CHAIR HOLTZMAN: Sorry for the interruption.

MAJ SCHWEIG: Yes. I'm not going to have a chance to excise that, am I?

(Laughter.)

MAJ SCHWEIG: Nevertheless, we also train our enlisted legal service support specialists at the same time as we train our officers in the same location because, if possible, we do prefer to train as a team. And this is an example teaching one of those classes.

Every year we try to do something innovative or different or interesting. And by that, we invite outsiders. This is part of our transparency effort and, also, a way for us to plug additional experience into our training programs.
What you see pictured here, our two panelists are representatives from the Manhattan District Attorney's Sex Crimes Unit, Ms. Coleen Balbert and Ms. Vanessa Puzio. This panel was actually moderated by the Staff Judge Advocate to the Commandant, Major General John Ewers. That was a very interesting discussion. We just sort of bounced our practices back and forth off of each other. Frankly, we learned a great deal from them.

We incorporate trial advocacy elements. Pictured in the foreground in the blue shirt is actually the Navy TCAP, highly-qualified expert, Mr. Giles, who has taught at the NAC. And you can see there we've got a camera going and we have a Navy lieutenant delivering an opening statement. She videotaped that opening statement, and then, we took her into another room and, of course, gave her some feedback. And then, she got to observe herself. So, we do elements of what is commonly done at the NAC.

Your Question No. 2 referred to RSP
implementations. And so, actually, I could have just typed it, but I thought it would be more interesting to just actually cut out the thing that we submitted to you several years ago.

So, the question here was, what have we done to sustain or increase training in spite of the challenges created by turnover? This chart you probably can't see, and that is partially by design because it includes all of the different training offerings we have for FY16. So, there are more than 30 different distinct trainings that a trial counsel could attend. Obviously, no trial counsel could attend all of them because they would never get any work done otherwise.

But the mandatory training days come out to 18 per year. That includes the TCAP annual training. It includes the regional trial counsel training and the senior trial counsel training. So, there's 18 mandatory days, and the rest of the training courses, you know, the trial counsel will attend those as designated by their
supervisors. So, if they find that there is a missing skill set with any particular office, they can simply send in trial counsel to one of those trainings, to include NDDA offerings and the other Service schools.

The other RSP recommendation I am going to address was No. 119, which is that we should provide a permanent civilian presence. So, again, I would like to reference a photograph you've seen earlier, except this time I'm going to call your attention to Ms. Katherine Maldoon; Ms. Julia Hejazi, who is actually seated right next to me here, and then, in kind of the center is Ms. Martha Bashford, who is actually the Chief of the New York County District Attorney Sex Crimes Unit. All three of them are actually leading our small groups for this training.

There is also a recommendation to utilize experienced military Reservists. We incorporated the following people into our training this year, and you can see they come from a wide variety of geographical locations and
a wide variety of practice areas. So, there's
district counsels, private practice attorneys,
United States Attorneys, Assistant District
Attorneys, and so on and so forth.

Finally, I will look at the Service
collaboration. He spoke to you already this
morning, but there in the background is Commander
Mike Luken from Navy TCAP. And I could
incorporate all of his comments into my comments
as well, and I wouldn't run afoul of anything.
We work together very closely, and we were very
honored to have him both attend and instruct at
our training this year.

And you can see any number of people
in blue uniforms from our sister Sea Services who
attend our training as well.

With that, over to Ms. Hejazi.

MS. HEJAZI: Good morning. Thank you
for the opportunity to speak with you.

As a prosecutor for 16 years, I can
tell you that I never experienced the level of
training that I have seen in the Marine Corps
because we did not have the time or the
opportunity to attend this level of training at
any time.

After becoming the HQE for Marine
Corps TCAP, and I also serve at Quantico with the
local prosecutors, I reflected back on what
affected my career as a prosecutor most, and it
was to have attended the National Advocacy Center
for their childproof class. That one class
affected me in so many ways in my ability to be a
prosecutor.

We modeled our training this year
after the experiences we have at the NAC and in
other trial ad-type programs, and created a mock
case file that was huge, for the Marine Corps, at
Major Schweig's direction, giving us just about
every type of evidence that we could add to our
story. So that after we did our training this
year, our trial counsel could take that mock case
back with them and, through their training
throughout the year, continue to build on and use
pieces of it to practice pieces of evidence and
understanding how to utilize and how to just
better prepare themselves to walk into the
courtroom.

Our continual training includes
working with our STC. Our senior trial counsel
does monthly training at each of the offices, and
our regional trial counsel do quarterly training.
A lot of that is focused on sexual assault. And
the HQEs also participate in that training,
although these trainings are not only about
sexual assault because we prosecute all kinds of
crimes, just as civilian DA's offices do. But
our major focus in most of our training would be
in the area of sexual assault.

In addition, to keep our trial counsel
updated, we have a blog that TCAP puts out.
Anytime there are changes in the law or cases
that come forward that are particularly going to
affect the way we practice, we create a post on
our blog and send that out to the fleet, so that
they can read it.

For example, in the Stiletto case,
which addressed a lot of issues regarding
discovery and how that was handled in the case,
we prepared a blog to educate our attorneys on
discovery. And I tied that to personal
experiences, having been a prosecutor in North
Carolina during the Duke lacrosse case. I shared
with them the effects of one prosecutor's actions
and how that affected every prosecutor in the
State, and how we looked at discovery and how we
handled our practice as prosecutors.

We also have discussion boards where
our prosecutors can write in questions, and the
entire fleet can respond or TCAP responds with
answers to help address issues.

All of these things help TCAP to
create training that is most effective because we
are trying to stay on top of all the issues that
are occurring in the Corps, if there are any, and
making sure that we are addressing those in
training.

Our HQEs sit on every sexual assault
trial in the courtroom. I can only tell you
that, as a prosecutor, how many times, particularly at the beginning of my career, that I was in the middle of a trial and looked back just hoping one of my colleagues was in the courtroom that I could raise my hand and say, "Please help me."

Our HQEs are in the courtroom, and we are not distracted by our own caseload or any of the other issues that civilian prosecutors would have when they are sitting in the courtroom trying to help a prosecutor try a case.

We assist with witness interviews. We assist in openings, try prep, just about everything that we can do. Because of having the HQE and the caseload within the Marine Corps, our prosecutors have the opportunity to practice their openings, their closings. We do mock directs and crosses to prepare for trial.

Again, as a civilian prosecutor, I can tell you that the only time I ever practiced an opening was in the shower the morning before or in the car ride on the way to work. So, our
prosecutors have the opportunity to do their opening, receive feedback, try it again and try it again, if they choose to.

We also send out a disposition report on our cases, so that we can look at what original charges were, how a case was resolved, and what punishments were given. So, we are always thinking about fairness and equity in our decisions and how we handle our cases.

It is an amazing opportunity to work with trial counsel in the Marine Corps. They come in with a background in training, in my experience, much more, at a much higher level than what I experienced as a prosecutor. I went to law school and truly didn't know my State's law as a prosecutor. So, I had to start out learning that. I had to learn my Rules of Evidence, which I had learned Federal Rules at law school. I had a learning curve that occurred for quite a period of time. And the prosecutors I have worked with in the Marine Corps come in lightyears ahead, I believe, of where I was.
In addition, the supervision that they receive from their STCs and their RTCs allow them to grow quickly and, in addition, their supervision from HQEs who are there in the courtroom, and when they are marking a mistake or have made a mistake or are headed to a mistake, if possible, the HQE is there to say, "Hold up. Let's talk about this," and to learn from those moments, so that they are never repeated again. We prepare and plan in a way that I think gives amazing opportunities for growth quicker than I certainly experienced as a prosecutor.

Finally, I would say that the most encouraging and great part of my job is that I'm working with prosecutors who are never hesitant to receive criticism or suggestion and always take that advice and grow with it. That has been a really wonderful experience for me, working with the Marine Corps.

Thank you for the opportunity to speak with you, and I look forward to any questions you might have.
CHAIR HOLTZMAN: Thank you, Ms. Hejazi, and thank you, Major Schweig.

Mr. Taylor?

MR. TAYLOR: Yes. Thanks to each member of the panel for being here today.

Ms. Hejazi, I would like to follow up on your last comment, which I found very interesting. Based on your experience, how would you compare the job that military Special Victim Prosecutors are doing to that which you observed from civilian prosecutors? And I guess my question is, are we somehow in the military bridging the experience gap that is otherwise hard to deal with?

MS. HEJAZI: I believe we are, and I have been here for 17 months. And so, I have had an opportunity to watch numerous trials and participate in numerous trainings. I believe that the training that we are doing -- well, let me just step back and say that General Pede no one can say that experience isn't the best teacher of all, you know, years and years of
experience. But I believe we are doing a fantastic job of bridging some of the gap between the experience of someone being there 16 years and the experience of our trial counsel, based on the training that they are receiving.

Their effectiveness and ability in the courtroom cannot be compared, in my opinion, to what we see in the civilian world because of their background and training and because of their level of experience through the training that they receive and what they do in the courtroom.

MR. TAYLOR: And my last question is to any member on the panel who would like to address it. Early on in the history of this particular Panel's receiving witnesses' testimony, we heard some discussion about a little bit of tension that had developed over time between the Special Victim Prosecutor and the SVCs in general about relative roles and responsibilities.

I will be interested in hearing any of
you comment on the extent to which you think that is still around or if you have adopted policies or training specifically to deal with that issue. I thought it was interesting, for example, Colonel Batdorff, that you are inviting the SVCs to participate in this session that previously had just been confined to the prosecution and the defense. But would anyone like to comment on that?

COL OLER: I'll go ahead and start.

Thank you for the question.

The Air Force has been working with the SVC program for the longest time now of all the Services. And bottom line, it has become a partnership, I would say, between the Special Victims' Counsel and the senior trial counsel. We know when the senior trial counsel goes in to prosecute a case that involves a victim, if that victim has a Special Victims' Counsel, the victim is being taken care of in a way that the prosecutor is unable to do because the prosecutor doesn't have an attorney/client relationship with
the victim. So, that nets a lot of benefit for our process, just in terms of going forward with a case and in prosecuting a case.

We definitely do partner with the SVC community. You will hear from Colonel deCamara later today about some more of this. But SVCs are now incorporated into some of the training that we do in the prosecution function.

For instance, the Intermediate Sex Assault Litigation Course, which takes place five times per year at different locations throughout the world, is composed of trial counsel, defense counsel, and Special Victims' Counsel. At least a portion of the training that we do with the prosecution team, when we just break out into an individual group, involves inviting a representative from the Special Victims' Counsel community to come and talk to the prosecutors. Oftentimes, we will have a prosecutor brief with a Special Victims' Counsel to a joint group of Special Victims' Counsel and senior trial counsel and base-level practitioners, about partnering
and issues that can come up in sex assault prosecution. So, I would say I have seen a net benefit as a result of the SVC community's involvement in these cases.

MR. TAYLOR: Anyone else like to comment on the question?

COL BATDORFF: There will always be examples where there's conflict between parties involved in a trial, but I think the number of those incidents where there is conflict between the prosecution and the SVC has gone down substantially.

I talk to my 25 SVCs on a pretty regular basis, and I will tell you that the ones who have been in the position for a while will tell you it is night and day from what it was. And that is attributable to a few things, sir, that I attribute it to.

First, it is just time and maturity of the program and people realizing that this is a good thing overall, having the SVCs there assisting the survivors through the process.
Also, we have in the Army -- and I think the other Services may, too -- we have a policy now that strictly lays out, signed by our Judge Advocate General, what you will provide to the survivors through their SVC. You will provide a copy of the charge sheet, redacted if necessary, if there are other victims' names on there. You will provide a copy of his or her statement to the SVC. So, that has helped, too.

And I know later we are also going to have a representative who coordinates the SVC training. But there is a new SVC Handbook that has changed their internal policies as well, which I think has helped, sir.

CDR LUKEN: Sir, I would say in the beginning, yes, it was a new program. At that time, I was sitting as a military judge, and even the judiciary was kind of struggling, what's the role going to be of the VLC; what are they going to be able to do; what are they not going to be able to do; what's their standing, those types of things?
That has been worked through at this point. And now, I feel we are more in the adolescence stage, still a little awkward, gangly at times; we have our braces on; we are prepared to get them off.

(Laughter.)

CDR LUKNEN: But we are progressing in the right direction. What it comes down to is really communication, and some of that is by integrating, as the Colonel has said, Victim Legal Counsel into our trainings, as well as have some of the TCAP prosecutors integrate into their training.

And then, also, we have started doing some post-trial hotwashes and having the VLC there present to discuss what are the things we could have done better, what are the things they could have done better, and so on and so forth.

MR. TAYLOR: Major?

MAJ SCHWEIG: Sir, I don't have anything to add beyond what we have already said.

MR. TAYLOR: Thank you, Madam Chair.
CHAIR HOLTZMAN: Thank you.

Judge Jones?

JUDGE JONES: I just have a quick

question to go back to highly-qualified experts

again.

First of all, I have to say it is very

impressive to hear of all the training programs

for each of the Services. They sound terrific

and they also sound like they are being very

effective.

But I am curious as to why the

Services who do not have HQEs don't. What

analysis, if any, has gone into that?

CDR LUKEN: Judge, the Navy does have

them. I didn't highlight them during my opening

statement. But we have two. They are both with

the TCAP. One specializes in domestic violence

and sexual assault. The other is our child

expert.

JUDGE JONES: Right.

So, the Air Force does not have them,
correct?
COL OLER: That's correct, yes, ma'am.

In terms of our construct, we are organized differently than the other Services, even within the JAG Corps. Our Judge Advocates School in Montgomery is the focal point for the training that is received for all Air Force JAGs. Litigators, non-litigators, all Air Force JAGs, the hub of training comes from our JAG School.

In addition, though, I did emphasize the training that the senior trial counsel provide. It is quite extensive.

But, organizationally, if I could back up for a second to the construct of my office, the Government Trial and Appellate Counsel Division, we are unique among the Services in that we combine at the government side of the house the trial and the appellate counsel. So, the office contains the government prosecutors, which I've talked extensively about in my opening remarks and what they do day-in and day-out, and the training that they have received, but it also is comprised of government appellate counsel.
Now those appellate counsel certainly, as you can imagine, they represent the United States on appeal for the criminal cases, the courts martial that result in conviction. They argue those cases at the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces.

But, in addition to that work, they are all litigators themselves. So, they happen to be in appellate government counsel roles right now, but all of them, if not most of them, all of them are former area defense counsel. Actually, two of them out of six are also former senior trial counsel, so full-time prosecutors. So, they have extensive litigation background.

Oftentimes, what we do at JAJG, the Appellate Trial and Government Office, is we will send our appellate counsel out if we have a case that is maybe a lower-level case that we wouldn't typically assign a senior trial counsel to, but it is a base that needs some assistance. Say it is a drug case and you have younger counsel who
haven't done a lot of criminal litigation before. We will send our appellate counsel out to try those cases with those base offices and help instruct and teach them how to litigate that case, because they have the litigation background to do it.

One other point I would like to hit is the three civilians that we do have that work, one of them is in my office. He is the senior appellate counsel. He is a retired colonel from the Air Force and he used to have my role. And before that, he was a prosecutor. He has a long line of criminal litigation jobs. So, he has extensive experience as a criminal litigator.

He and the rest of the Appellate Government Office are available and, in fact, do consult with the field every day on issues that arise during the course of litigation. So, when questions come up from a trial counsel who is in trial, literally with a question about what do I do in this situation, they call my office, and the Government Appellate Attorneys roundtable the
issue and provide information back to the field on a way forward.

Additionally, there are two other civilians that were recently hired in the Air Force judiciary who have background and expertise in criminal litigation. One is Mr. Bill Orr, and he is the Chief Strategic Legislative Trial Policy Attorney. He has a background, extensive background, as a military judge and as an appellate judge. He is available for reach-back assistance as well, as is Ms. Asha Vaghela, who used to work, I believe, as an HQE for the Navy. I think I have that right. She now works for us. She has a background in the Bronx DA's office, and she has provided training to the prosecutors and is sort of a program that we are starting to ramp up and to get going.

But thank you for your question.

JUDGE JONES: Thank you.

I don't necessarily believe that any one training technique or supervisory technique is necessary. There are obviously going to be
combinations. I am just curious as to what, if any, analysis goes into not having highly-qualified expert, maybe logistics. I think of the highly-qualified expert as someone who is available in the courtroom and will supplement when maybe there aren't enough senior counsel. But maybe I misunderstand what an HQE is. I am just curious as to the analysis of the Services who don't have them. You obviously have civilian former prosecutors who were in your training programs and supervisory roles.

COL BATDORFF: The Army has six HQEs, three of whom work for Army TCP. They help us with our training, as I mentioned previously, but they also do spend at least two-thirds of the year on the road. All three of them are on the road, sitting behind the bar, as Ms. Hejazi details of the Marines, helping them prep witnesses, interview witnesses, practice opening statements, and things like that, the three that work for us.

DCAP, our Defense counterpart, has two
HQEs, and there is one HQE who works at the strategic level there.

JUDGE JONES: Thank you very much.

CHAIR HOLTZMAN: Admiral Tracey?

VADM TRACEY: Just two questions. I think all of you have described a process during which a trial counsel gets signed off as being eligible to prosecute independently. Does anybody fail?

COL BATDORFF: The baseline qualification under UCMJ to try any case is to be qualified and certified under Article 27(b) and sworn under Article 42(a). Usually, that means you have passed your Service's version of the officer basic course.

Have lieutenants failed the basic course? It is rare. I think it has happened. So, I think that that's very rare that that has happened. I'm not aware of any particular instances. I am sure it has in the many years that we have been doing that, ma'am, but --

VADM TRACEY: Yes, I'm not talking
attrition out of the basic course. I'm sure people fail because they are not officer quality, or what have you. But how about people who have been assigned in the field and they are now going to be signed off by the regional trial counsel or the senior trial counsel as eligible? Does anybody fail to be signed off or is that just a matter of time?

COL OLER: I don't know about failed to be signed off. There are some people in the Air Force who are signed off sooner than others. So, in order to be trial-certified, our Judge Advocate General -- and there is a requirement -- has to find that the counsel are competent to sit first chair in a general court-martial.

Typically, although there is not a minimum case requirement, it typically means at least three courts-martial, and it also means that a military judge has to be willing to endorse that counsel's performance. There is an actual process in place whereby the Staff Judge Advocate and the military judge write
recommendations for certification. That certification package then goes up through the Pentagon and is acted on by the Judge Advocate General.

So, some counsel have, say, a background in criminal litigation and they come into the Air Force JAG Corps as prior Assistant District Attorneys or prior public defenders. And so, they obviously have a leg up. They are maybe more proficient in basic litigation skills than someone who doesn't have that background. So, they might be the type of attorney who gets certified faster than an attorney who doesn't have that same background.

I believe -- and I don't want to guess as to the answer to your question, ma'am -- I believe that there are some who have not achieved certification, but that number will be small.

CDR LUKEN: Yes, Admiral, the Navy has traditionally done a kind of office certification. So, we haven't done individual. We are shifting to individual.
I will say I have seen counsel who have started as assistant trial counsel on cases where their aptitude to do these type of cases just isn't there. What happens is they will get detailed to future cases. They handle other cases and, also, in some cases they get moved onto other jobs where they will be more proficient that aren't necessarily military justice.

MAJ SCHWEIG: The office practice sounds like what Commander Luken just described, ma'am.

COL BATDORFF: Likewise, ma'am.

VADM TRACEY: The second question, also going back to early days of this Panel, concern was expressed that becoming a Special Victims' Counsel would take an officer's career off-track, that that would become ultimately a damaging assignment to have taken.

What would be the markers to you that that was not true? What kinds of things would you look for in terms of the presence of prior
Special Victims' Counsels in a hierarchy that you have described? And it is probably too early to have seen that.

COL OLER: Our senior trial counsel and our Special Victims' Counsel or Special Victims Unit Prosecutors fare very well in promotion categories. They do exceptionally well, and that could be a combination of factors. But it certainly is not an issue. In fact, the reverse is true. They do exceptional jobs getting promoted and moving on to additional leadership billets within the JAG Corps.

VADM TRACEY: Did you say Special Victims' Prosecutors?

COL OLER: I misspoke. I mean the Special Victims' Unit Prosecutors and the senior trial counsel both. So, one is a subset of the other.

VADM TRACEY: My question was about the Special Victims' Counsel.

COL OLER: I'm sorry, I misheard your question. I will defer my answer on that one to
our Senior Special Victims' Unit SVC.

CDR LUKEC: Ma'am, I have not seen
that because that is pretty specialized in the
sense that promotions would be based on the
aptitude of the overall counsel as they progress.
So, just because someone is a trial counsel who
happens also to be a Special Victims' Counsel,
they may not limit them. In fact, they will
probably get to do many other complex cases. So,
I just don't see how that argument prevails
ultimately, that someone would be held back by
that. Instead, someone who maybe focuses
strictly on military justice their entire career
may have challenges, as they get more senior, to
make the senior ranks just because of the demand
for the service.

VADM TRACEY: You're all senior
enough, though, to know that there are all some
jobs that you expect to have certain
representative experiences before people can be
assigned to those. And those are important jobs
to have held in order to have the opportunity to
advance further in the Service. For example, would you expect at some point to see Special Victims' Counsel in your jobs?

CDR LUKEN: I'm sorry, ma'am, I misspoke. I was talking about -- the problem with the Navy, one of them is that we affirm the Victim Legal Counsel. I apologize, I misunderstood the question.

COL BATDORFF: As you mentioned, ma'am, it really hasn't been long enough yet to see the promotion rates. I know anecdotally I have known several Special Victim Counsel who have been promoted.

As I mentioned during my remarks, it is considered a good job for a senior captain to be a TCAP training officer. And one of my training officers was one of the first Special Victim Counsel. So, it hasn't really impacted him or anyone that I am aware of.

I know from looking at assignment patterns, when we publish those, many SVCs have gone on to be defense counsel or senior defense
counsel. So, it still too early to tell with regard to promotion rate, but as far as assignments, I have not seen any negative impact of having been SVC, ma'am.

MAJ SCHWEIG: Ma'am, for the first part of your question, I will defer to Colonel McDonald, who I believe you are going to hear from later today. And for the second part of your question, I would enthusiastically recommend any SVC for this job, my current job.

(Laughter.)

COL OLER: Really quickly, to address one aspect of your question, ma'am, we do have our first Special Victims' Counsel who has become an area defense counsel. So, the program is new, but we are seeing that transition from Special Victims' Counsel into other areas of litigation, and I do expect to see that continue.

VADM TRACEY: Thank you.

CHAIR HOLTZMAN: Mr. Stone?

MR. STONE: Yes, thank you.

My first question relates really to
the comment that Professor Taylor made before, about some literature we got that is now in the public record about saying that, pointing out that the prosecutors of sexual assault crimes in the military have way less contested trial experience. In fact, it said something like 90 percent, 89 percent haven't tried 10 sexual assault trials.

And I didn't know if you wanted to comment on that, but I didn't think a comment was necessary. But now I do, because I heard in Major Schweig's presentation of slides that you can be an SVC with one contested trial and six months of experience, if I heard it right.

And I heard in Colonel Oler's presentation that three contested trials can qualify you as a senior trial counsel. I don't think anywhere in any civil jurisdiction in the country that would be true.

So, I am curious to know. You know, you've got great training, but that is not the same as just having three contested trials. That
would be a beginner in every civil prosecution, of course.

COL OLER: Absolutely, sir, and it is a beginner in the Air Force as well. So, the trial certification, the three trials that I was talking about, that is to sit second chair on a case. That is absolutely not to sit first chair as a senior trial counsel.

Our senior trial counsel come to us with at least 50 trials, and in the sitting group of senior trial counsel that I have right now, it is, some of them, upwards of 130-150, the majority of those being contested trials.

MR. STONE: Okay, because a plea doesn't really count as a trial. I think that is just confusing for everyone to say that. When you say "trials," I would appreciate, if you could, if you could try and talk about contested trials because, otherwise, it doesn't get to the heart of the problem when there is a contested trial.

And maybe Major Schweig can comment
on, is there always a second chair for an SVC? I
didn't think there were. They go in with one
trial. I don't know what is likely to be coming
down the pike.

MAJ SCHWEIG: I will provide a
response to your question, sir. I would like to
defer to Ms. Hejazi because she actually sits in
the courtroom for these trials, which I do not do
in my current position. So, I don't feel
qualified to directly answer your question.

MR. STONE: Okay, okay. The last
question I have -- and I don't know if you heard
the Chair's question to the last panel; it sort
of piggybacks on that question -- and that is,
and I will start with, again, Colonel Oler,
because you brought up the topic of being
responsible for appellate attorneys.

The way things stand, Special Victims'
Counsel have the right to participate to defend
victims' rights/interests, 412 and 513 hearings,
when victims have lost that right in a ruling by
a military judge, but they don't have that right
to defend it when they have won it in front of
the military judge and they might well lose it in
the appeal. They don't get to be up there to
say, "Wait a second. You're about to reverse on
that ground. Can we file a brief and get the
same 15 or 20 minutes to argue that the other two
parties got?"

Because, as I was hearing the comments
before, at least three of you mentioned -- one
said it is a good thing they are there because
they have different interests. Another one of
you said you can now recognize the differences
between them and it is good. And the third one
said you have worked out, worked through how you
have different pieces to put together.

So, I guess I don't understand why
their piece, if it is a victims' rights issue,
not on issues that don't affect them but on the
victims' rights issue up on appeal, shouldn't
give them the same rights if they won the issue
below as if they have lost it. Now I wonder if
you could give me a comment on that.
COL OLER: Sure. I believe that the issue involving victim appellate rights is an evolving one, and it is one that has been recently presented to the Services. And so, we are absolutely trying to work our way through it as best we can.

I know that the Court of Appeals for the Armed Forces recently heard a case this past week involving a writ appeal on this very topic. And so, how that Court rules in that case will sort of dictate and indicate how we move forward with respect to victim involvement on appellate issues.

There is proposed legislation; I understand that as well. And we are amenable to working through the issues as best we can. But it is very much in the new stage of practice right now.

MR. STONE: No, no, I know that. I guess what I am asking is, do you see from your job a problem on the appeals on what may involve a victim rights issue if only the victim
participated? Do you see that as raising a
problem for your appellate attorneys?

    COL OLER: No. I mean, my appellate
attorneys right now, when there is an issue that
involves a victim issue, a 412 motion or a 513
motion, my attorneys are doing the absolute best
they can to take that pleading and forward it to
the SVC community, so that they have awareness of
that issue. So, we don't have a concern with
involving them in the process.

    MR. STONE: I don't know if anybody
else has that appellate scope and, therefore,
would like to comment on it, too. But I am happy
to hear it.

    CDR LUKEN: The appellate doesn't fall
under TCAP in the Navy. It is a different code
or a different policy.

    But, having interacted with them, my
position for TCAP, I could say I don't see an
issue with, if someone has an interest at the
appellate level, 412 or 513, that they would be
able to brief, I don't see that affecting from a
trial counsel standpoint an issue.

COL BATDORFF: We are co-located, our TCAP is co-located with the Government Appellate Division. We work with them, but we are kind of separate. I agree with Commander Luken that we don't have a problem.

Fortunately, in most of those circumstances, the Government and the SVC won an appeal regarding the protection of, say, for instance, 513 rights. So, the Government Appellate Division's interests are going to be aligned in every case with the interest of the victim because they want to preserve that ruling at the trial level, too.

But I agree that the victims and survivors should be also notified and afforded the opportunity to weigh-in, too, sir.

MAJ SCHWEIG: And, sir, we are entirely separate entities in the Marine Corps, and I am not co-located with them.

CHAIR HOLTZMAN: Okay. Well, I have no questions. So, I just want to thank all the
members of the panel for very interesting and
important presentations.

And we will adjourn for lunch.

(Whereupon, the above-entitled matter
went off the record at 12:03 p.m. and resumed at
1:01 p.m.)

CHAIR HOLTZMAN: Thank you very much.

The Judicial Proceedings Panel is
ready to commence its afternoon session.

We are -- I want to welcome all the
Members of the Panel and thank them very much for
taking the time to come and share their expertise
with us.

Excuse me, could those in the back who
want to speak privately, please find some other
place to talk.

We will begin with Colonel Daniel
Brookhart, U.S. Army, Chief, Trial Defense
Services Panel will focus on the overview of
training and experience of attorneys defending
sexual assault cases.

Colonel Brookhart, thank you for your
appearance and we look forward to your testimony.

COL BROOKHART: Madam Chairman,

Members of the Panel, thank you for inviting me here.

My name is Colonel Dan Brookhart. I'm the Chief of the U.S. Army Trial Defense Service.

I would like to say up front, any views I might express today are my own and not those of the Judge Advocate General and the United States Army.

We were presented with a series of questions from the Panel to answer and I'd start by answering those up front and then would happily take any questions you might have.

The first question dealt with a brief summary and the experience level and training defense counsel must go through before being assigned to a sexual assault case.

And, I would say that, in the U.S. Army Trial Defense Service, we don't have any specific requirements for either experience or training that must be met before counsel are
assigned to any particular type of case.

Now, in most instances, the senior defense counsel, who is the field level leader of a defense office, assigns and details counsel to cases based upon factors such as complexity of the case, prior experience and capabilities of the counsel and also the number of counsel they have available.

And, approximately 80 percent of defense counsel arrive in my organization with some prior experience usually as a trial counsel, but that's only 80 percent. So, some arrive with no prior experience.

So, we can have an experienced counsel in every case, but some do come without experience.

Even in those cases, ideally, you would not want to assign counsel to a sexual assault or any complex case until they've completed at least our DC 101 training, which I believe you've heard about -- some about earlier today and served as a lead counsel on one or more
less complex cases or at least a second chair on
a more complex case.

However, the realities of TDS manning
and caseload often weigh against such a
deliberate developmental process.

In those instances where, out of
necessity, defense counsel with less than ideal
training and experience are assigned to defend
sexual assault cases and the guidance and input
of their supervisor, the senior defense counsel.

And, they also have access to the
advice and assistance of our defense counsel
assistance program who are available 24 hours a
day to help counsel with any challenges they
might have in a particular case.

Now, the second question was, since
the Response System Panel evaluated counsel
training in 2014, what, if any, changes have been
made for the defense counsel training programs?

And, again, I would say the trial and
defense service organization training model, I
mean those classes that we teach as an
organization to all counsel, including the DC 101 and 201, have not changed since 2014.

So, our model is still the same.

Obviously, the content of those training programs within the classes has changed based on changes in the law and based on what we perceive through input from the field as areas where counsel need more training.

The third question was, what types of continuous training and continuous evaluation are done for defense counsel who defend sexual assault cases?

Now, over the course of a normal tour in TDS, which would be two years ideally, defense counsel will receive a significant amount of both field office level training and the program training I discussed earlier.

Both categories are training while often addressing sexual assault because that's our most common type of case right and it's a complex issue.

But, they're both really designed to
make counsel competent to try any kind of case,
not sexual assault specifically.

Now, the first category of training I
had mentioned is the field office level training.
And, in the Army TDS, training is first and
foremost to supervisory responsibility.

And our TDS SOP, our standard
operating procedure, requires the senior defense
counsel to conduct training on a weekly basis.
And, that training is often done by the senior
defense counsel or they might select one of the
Captains.

They have the Captain learn a subject
and then teach that subject to other counsel.

And, they're allowed a lot of leeway
in what classes they teach in this part of this
training program because they have the SVC as the
best idea of the experience level of his counsel,
the types of cases they have and whatever the
unique challenges might be in their jurisdiction.

So, they can tailor their program to
meet those needs.
They are required, as part of the policy, to also submit a training plan to their regional defense counsel, their immediate supervisor and then up to my office and myself.

So, I review the quarterly training programs of every office in the Army Trial Defense Service to make sure that they're on track, they're training the right things and also to get an idea of what challenges they may be facing.

Or, if I see something that looks particularly good, I might have DCAP share that out with other offices, an avenue of training or sometimes, they bring in an expert who I find is particularly good and I'll share that with the rest of the trial defense service.

And, you know, to aid in that, each quarterly report also contains a summary of the training they've done over the quarter in addition to their plan for the next quarter so we get some idea of what's been done. And, it's sort of a check to make sure that, in the busy
schedule; they don't lose sight of the training and not do it.

In addition to the field office training, then counsel attend our programmatic training that's sponsored by the organization, taught through the Defense Counsel Assistance Program.

And, that includes our bedrock courses of Defense Counsel 101, which is taught worldwide six times a year. So, we do one course in Korea, one in Germany and the other four are in the continental United States.

So, that's for new defense counsel, new to the organization, new to the job that teaches them the fundamentals of being a defense counsel and then refresher on other fundamentals such as cross examination, openings, closings, that sort of thing.

And then, the follow on to that is Defense Counsel 201, which is taught four times, again, worldwide where they get more advanced training and more training directed towards
whatever specific issues might be out there in the defense community.

    Now, they might also attend courses during the typical tour or might also attend one of two joint DCAP/TCAP conferences, one of which is the sexual assault trial advocacy course which was at Baylor University last year.

    And then, the advanced trial advocacy course, which I think was spoken about earlier today, which we use that sort of a professionally trained actor to help with counsel's presentation capabilities.

    So, it's not necessarily law-focused, but it's more focused on getting up in front of people and being an effective speaker and conveying information in front of people.

    So, they'll typically attend one of those two courses. And, if they haven't already turned -- attended the intermediate trial advocacy course here, normally, they would do that as a trial counsel, but then they would be sent back to attend that course as well.
We're also able to, depending, you know, depending on funding available, send counsel to outside courses in the civilian world.

As an example of this, I received funding recently to send ten defense counsel to the Defense of the Damned Course at the Trial Lawyers College, which is a lengthy course, but quite good.

So, we're very happy to be able to find some select people, they applied to that. We went through the applications and selected ten to go out and receive that training, so we can build a bench of counsel for our more high-profile cases or capital cases, should they arise.

Now, the second part of the question addresses evaluation of counsel. In monitoring and evaluating counsel, this is, again, an obligation of leadership.

So, we put a lot on the shoulders of the senior defense counsel out in the field offices and they're usually Majors. So, it's
their job to monitor the development of counsel.

And they do this, by helping counsel through the preparation of their cases and then mentoring those counsel through case preparation. And then, observing, if not directly participating in as the second chair, in their in-court advocacy and then, you know, back briefing and going through a study process on how they perform in court.

Regional defense counsel will travel throughout the region. They'll meet with the Military Judges, they'll meet with the Staff Judge Advocates, they'll meet with the Chiefs of Justice to get an idea of how their counsel are performing.

And, they use that information to help evaluate their counsel and identify areas where more training might be needed.

To that end, I also travel to these training opportunities, DC 101 and 201 and I meet with the SJAs and the Trial Judges while I'm out traveling and we obtain their input on how,
generally not specifically, but generally, how
counsel are performing and what areas they might
need work in.

And finally, another aid in our
evaluation process was recently adopted by the
Army Trial Judiciary, and that's a survey that a
Military Judge completes after each trial across
some broad categories, direct examination, cross
examination.

And, they rate the counsel,
anonymously, they rate the counsel in those areas
and then that feedback is posted on a website
that either the Government or the defense can
access and use that to drive development of the
training program.

So, that summarizes my response to the
questions that were specifically provided.

Subject to any questions you might
have, that's all I have at this time.

CHAIR HOLTZMAN: Thank you very much
Colonel Brookhart.

Our next presenter will be Colonel

Welcome, Colonel.

COL HIGGINS: Thank you, ma'am.

Madam Chairwoman and distinguished Members of the Panel, thank you for the opportunity to speak with you today about the Air Force Trial Defense Division and our efforts at training counsel to defend the Airmen.

As a defense counsel, I'm very grateful for the opportunity to discuss this topic with you today.

As the Chief of Trial Defense Division, I am privileged to lead the Air Force's 187 defense counsel and defense paralegals worldwide. These are our professional officers and Noncommissioned Officers dedicated to providing defense services in a zealous, ethical, professional manner to more than a 100,000 Airmen stationed around the globe.

By way of a quick overview, the Trial Defense Division is broadly divided into five
regional circuits, one covering the Pacific and
Asia, one covering Europe and the Middle East, if
you will, and then three here in the States.

Each of these circuits is headed by a
05 Lieutenant Colonel, Chief Senior Defense
Counsel, responsible for the provision of defense
services within their circuit or circuits.

They're also responsible for the
training of their subordinate counsel.

So, to support them, they have between
five and -- I'm sorry -- between six and seven
senior defense counsel. These are 04 Majors.
These form kind of the backbone of the counsel
who are going to be trying sex assault cases.

Each of these senior defense counsel,
or SDC, total of 19, in turn, supervise four or
five geographically disbursed area defense
counsel offices at the base level.

And, it's these teams of the ADCs and
defense paralegals, DPs, that form the core of
the defense community.

They'll represent eligible Military
Members in administrative and judicial matters at their installation and are primarily responsible for -- excuse me -- as I said, representing Members at their installation, but they may also be detailed to cases at other installations as needed to balance the workload or avoid a conflict of interest.

With respect to the specific questions that I was asked to comment on today, let me talk first about the experience level of our counsel.

Area defense counsel are competitively selected following one or two base level assignments. In general terms, they will have spent between two and five years in the Judge Advocate General's Corps at the base level wing office, wing legal office, and have prosecuted, excuse me, approximately ten courts martial prior to assuming their duties as a defense counsel.

On average, an annual workload for one of our defense counsel is about eight to ten court martials per year, 75 non-judicial punishments and then another 300 to 400 adverse
administrative actions.

ADCs come to us using kind of a best qualified standard. They come from across the Air Force.

Their individual supervising Staff Judge Advocate is going to first nominate those individuals from within their staff with the litigation skills, maturity, judgment, organizational skills necessary to operate independently as an area defense counsel.

Once that SJA has identified those Captains they feel that are ready for the challenge of serving as defense counsel, my division, the Trial Defense Division, will evaluate and concur or nonconcur with each individual nomination.

From there, it's going to go to the major command's Staff Judge Advocate, one of ten in the Air Force who is going to, again, review the nomination and concur or nonconcur.

Our professional development division, I'm sorry directorate, will then review the
nomination.

And, finally, the Judge Advocate General will personally act to approve or disapprove the nomination.

So, all of our defense counsel have been through a pretty rigorous vetting process.

Every one of them meets the minimum qualifications for service as a Judge Advocate. They are all certified under Article 27 of the Uniform Code of Military Justice.

And, once selected as a defense counsel utilizing that process I just laid out, they are expected to represent Airmen at their local installation in need of representation without regard of the offense.

Our senior defense counsel, and again, there are 19 of those, selection of them is, if anything, more rigorous.

Our senior defense counsel are tasked with providing not only the day to day supervision and then administrative maintenance of the defense teams at the installations they
supervise, but they're responsible, as I mentioned earlier, for defending Airmen in our most serious cases at trial which would include, obviously, allegations of sexual assault.

A senior defense counsel typically enters their duties having completed two base level assignments and having served for between six and eight years in the Judge Advocate General's Corps.

All have successfully completed a tour as an ADC.

Currently, about a third of them, six, have served a prior tour as a senior trial counsel where they spent approximately two years prosecuting the most serious cases we have.

One of the biggest challenges we face as the teams spread geographically across the world is training. We could not be successful without the skills developed by and the confidence that comes from the training our counsel received, were able to meet this challenge only with the help of our Judge
Advocate General School which works tremendously hard to support our training needs.

Each defense counsel has been through initial Staff Judge Advocate Office Course and the Defense Orientation Course which is a week long course focused on assuming those duties, the responsibilities of a defense counsel.

Each of them is expected to attend a Trial Defense Advocacy Course which is a two-week course dedicated to advocacy prior to or shortly after becoming a defense counsel.

Additionally, each counsel will attend annually an intermediate sex assault litigation course, a two and a half day course offered five times per year tied to those regional circuits that I mentioned. And, that course is dedicated solely and focused solely on improving advocacy in sex assault litigation.

That is taught by sitting senior defense counsel in conjunction with the Judge Advocate General School.

In addition to those above courses,
our senior defense counsel are expected to attend
the Advanced Trial Advocacy Course and the
Advanced Sex Assault Litigation Course.

These are both hands on, on your feet
advocacy courses where students are performing
and give a student faculty ratio of around three
to one. So, it's very small class sizes.

These are taught by our most
experienced litigators.

Further, we supplement the schools
training by sending counsel to civilian sponsored
courses including the National Association of
Criminal Defense Lawyers, the Center for American
and International Law, the Bronx Defenders and
the Trial Lawyers College.

Over the past three years, our
training program has evolved as we have
intentionally looked to incorporate more civilian
sponsored training into our curriculum.

As a result, we send about 20 percent
of our counsel annually to training offered by
someone other than the Air Force.
Counsel who attend these training sessions are expected to then return to us as they teach an ISOC and those intermediate courses incorporate the lessons they've learned and pass it on to the rest of the division.

The courses that we run and manage, the Intermediate Sex Assault Litigation Course is evaluated annually. We are consistently evaluating the training efforts to ensure that they remain both current and relevant to the environment in which our counsel operate.

In conjunction with the school, we evaluate every course to identify areas for modification and improvement and will conduct an annual detailed review of the defense orientation course so that we can adjust that course to meet the needs of our students.

In closing, let me say that I am very grateful to be here today with you. And, I appreciate the opportunity to discuss these issues and look forward to taking your questions.

CHAIR HOLTZMAN: Thank you very much,
Colonel.

Our next presenter will be Colonel Terri Zimmermann, U.S. Marine Corps, Officer in Charge Reserve, Defense Services Agency.

By the way, forgive me, I can't, because of the light behind you --

HON JONES: Yes, I can't see you.

CHAIR HOLTZMAN: -- I can't see your faces.

COL ZIMMERMANN: Would you like us to pull the curtain?

CHAIR HOLTZMAN: No, no, no, because we've got to get warm air in here.

COL ZIMMERMANN: Okay.

Well, thank you, Madam and Members of the --

CHAIR HOLTZMAN: Welcome.

COL ZIMMERMANN: -- thank you very much. It's a pleasure to see you all again.

This is not my first time, I'm happy to be here.

Thank you for having me.

I'm actually the Reserve counterpart
to the Chief Defense Counsel of the Marine Corps
who, until June 1st of this year will be Colonel
He's going to take a new job, he's retired.

So, I'm filling in for him now until
his replacement arrives which is sometime in
July. So, I'm really happy to be trusted with
that responsibility.

So, to jump right into the questions
that the Panel wants answers on, experience.

Our defense counsel come from a
different mold. We have a completely different
system in the Marine Corps, than what you've
heard from the other services.

Our counsel do not do some other job
necessarily first before they become defense
counsel.

In fact, a vast majority of our
counsel, it's their first tour. They're brand
new lawyers, sometimes right out of law school.

And so, to me, I think that's
important for the Committee to know.
And, the reasons for that are beyond the scope of what we’re here for today. I have some strong opinions about that, but suffice it to say that many of our defense counsel have not prosecuted a case. They have not been in some other job as a lawyer in the Marine Corps or necessarily anywhere else.

So, they're very bright. They're very enthusiastic. They're very dedicated but they're not very experienced, most of them.

And so, I really appreciate the opportunity to talk to you about this training piece of your job because it is very important, especially to the Marine Corps.

Of course, they're all -- have their basic certification under Article 27(b) and they've been to the basic office course at the Naval Justice School.

And then, at some point, maybe not before they start their official job, but at some point early in their tour, we try to send them to our new defense counsel orientation class which
is sponsored by the Naval Justice School.

    So, the focus really, the primary

thrust of our training, we don't have an official

certification process, but basically, we have a

CDC, a chief defense counsel possibly memo that

contains a check list. I think that's been

provided to the Committee, excuse me, to the

Panel.

    And, it's very intensive. It requires
counsel to do a lot of reading, rules, cases,

relevant statutes, on the various aspects of

being a defense counsel.

    It requires them to consult with

folks, people in their chain of command. It

requires them to have an in-call with a Military

Judge, with an SJA to sort of figure out how the

defense counsel fits in with the whole Military

Justice scheme so they get some practical advice

from people outside of the defense.

    It requires them to do some practical

applications, write motions, write clemency

requests that then get reviewed, obviously, by
more seasoned counsel.

And, they are required to second chair both guilty pleas, contested cases as well as the administrative matters that they're going to handle.

So, we don't throw them in the courtroom first case on their own. I don't want to imply that.

They have been in the court. They've been observed. They've had some of their work evaluated before we put them in the courtroom as lead counsel.

But, they are not required to have any certain number of trials in some other capacity before they become Marine Corps defense lawyers.

And, they are -- always have co-counsel. We don't ever throw them in there by themselves.

They're also -- each case is assigned to a specific counsel. It's not a random lottery type system. It's an actual deliberate decision made by the senior defense counsel at that
installation in consultation with the regional
defense counsel.

But, that region decides who is the
best lawyer to assign to a particular case based
on its complexity, based on the nature of the
charges, based on other legal issues that may be
involved.

And finally, I'd like to point out
with respect to their experience; they are with
us just a very short time, usually 12 to 14
months. And, that's also a manpower and
personnel issue that's beyond the scope of today,
but I wanted to mention it.

They're not with us for two years or
three years, they're with us for a short time.

Now, to answer the second and third
questions that were propounded to us, kind of
blend together in my mind. What are the changes
in training and what is the training? I know you
want to know that.

So, probably the biggest development
we've had in the Marine Corps DSO is Colonel
Newman developed what we call our training campaign plan.

It's an 18-month plan. It's top down where every defense counsel in the Marine Corps is, ideally, supposed to receive the same or similar training and everyone gets the same training regardless of when in the year they join our organization.

By the time they finish an 18-month tour, in a perfect world, we have more than 14 months, they, theoretically, should have been through all this training.

And, what it consists of is basically monthly training.

Now, we have one big training event per year that the entire DSO -- we call it the DSO Worldwide Community Training, that takes place for one week and all of our defense counsel attend that as well as our enlisted support staff. That's once a year.

And then, the other three-quarters of the year, the regions, you know, East Coast, West
Coast, national, Capitol Region and Pacific, they hold a training, okay, for that region. And, the other eight months of the year, the senior defense counsel at each installation are expected to do training for those local counsel there.

So, we want them to have some sort of training every month.

In providing that training, it's done in-house, if you will, by the local lawyers who are stationed there.

We also have a Reserve Branch that I'm in charge of. I have eight Marine Reservists that work for me that are experienced civilian practitioners and they are expected -- I mean, their job is to train and mentor the active duty defense counsel.

So, they help to create and execute these curricula items that are given in these trainings.

We also have two HQEs, two highly qualified experts, and they are very heavily
involved in developing and executing our training plans.

As far as outside training, we do try to send as many counsel as we can to the Bronx Defenders and to some NACDL, National Association of Criminal Defense Lawyers, sponsored training.

But, as you know, resources and particular funds are a battle. We're always fighting, can never have enough money.

Now, we've had some extra money in the last couple of years. We've had the SAPR funds which have been very helpful.

We have sent many of our counsel to, specifically with respect to sexual assault, we have a course called Defending Sexual Assault Cases that, for the past couple of years, taken place in Plano.

It's my understanding, and I'm not an expert on the fiscal issues, but it's my understanding that those funds are being reduced substantially this year and in years to come.

So, that's going to be a challenge we're going to
face. I don't know how we're going to replicate that.

But, the basic idea with our training is sex assault training is now intrinsic to all of our lawyer training.

And, what I mean by that is, if we are training on some other trial skill such as how to conduct voir dire or how to cross examine a witness or how to prepare a client, all of those training evolutions, we use sexual assault fact patterns.

In other words, how to conduct voir dire in a sex assault case instead of just some random larceny or drug case.

So, every training evolution pretty much is going to involve sexual assault because it is such a heavy part of our docket and such, you know, such a big part of our practice.

So, sex assault training is all of our training, even though we may be focusing on a particular trial advocacy skill or particular area of the law, we do tie it into sexual
assault.

We do require each counselor to have at least eight hours specifically of sexual assault training per year.

As far as other input that our counsel get to train them and evaluate them, you asked about evaluation is, obviously, peer support and peer supervision is very important in our organization.

We're a very tightknit small group and the regional defense counsels are expected to know what's going on in their regions. The senior defense counsel are expected to critique their folks.

The Military Judges in the Marine Corps and the Navy are very good about critiquing our counsel after court martial.

Obviously, without going into deliberative processes, but you need to work on this skill. Like, you don't know how to refresh recollection properly. You need to go back and study that.
They're very good about giving our
counsel specific critiques. You did this well,
you didn't do this well. So, that's been very
helpful to our counsel.

We also have a SharePoint site, which,
I didn't really know what SharePoint was until I
got in this job. It's basically a big website
that everybody in the organization can access.

And, we have motions on there. We
have briefs on there. We have announcements. We
have other resources, training materials.

Whenever we have a class, we put the
training materials on the SharePoint site so
people, if they miss that class, they can go and
pull the materials down and review it. And so,
that's a good source of training for our folks.

I think that answers the Panel's
questions, but if I may, I have three really
quick things I'd like to mention as far as
training and the challenges ahead, I've already
mentioned funding.

The other challenge I'd like to
address, Judge Jones, you very -- you mentioned earlier that there's a perception of a disparity in resources.

And, with all due respect, I'd like to say it's more than a perception, it's a reality. And, you heard testimony this morning that proves the point, the Government has four highly qualified experts, we have two.

And, our highly qualified experts have to cover the same territory that the Government's highly qualified experts have to cover.

And, you heard that the Government has a highly qualified expert in the courtroom during every court martial.

We can't possibly do that. There's only two of them, one on the East Coast, one on the West Coast. They can't possibly be in every courtroom when there's a court martial going on.

And so, they do try to get to court to evaluate counsel and critique and help when they can, but they just can't possibly do that. They also have other obligations besides just
critiquing the courts.

They have to help counsel with preparing their case and strategy and that sort of thing, reviewing motions.

The other thing is this whole idea of investigators and investigation. You know, the law requires a defense lawyer to properly and adequately investigate the facts and the law of every case or else you're ineffective.

So, we have incorporated some investigation into our training like how to investigate this, how to investigate that. That is part of our new training.

And, it's a fine line we walk because, if the courts say that you don't get a court appointed investigator unless it's for something you can't do yourself as a lawyer.

So, how well we train our lawyers to be investigators could actually work against us when we ask for investigative help. It's a catch-22.

Well, if you're that good of an
investigator, we don't need to give you one.

But, what I'm saying is, that takes their time away from working on their cases. I mean, our lawyers should be doing lawyer stuff, not investigator stuff.

So, when we have to train them on investigations, that's a period of instruction that's not being used to train them on how to cross examine a SANE nurse.

So, that's a challenge that we have is walking that fine line of how much do we want our counsel to get extra training on investigations because we're not getting our own investigators.

I mean, again, a disparity in resources, the complex trial teams on the Government side have their own dedicated investigators.

I ran across one just by coincidence last week, I was on active duty and I was in the hallway and I saw this very nicely dressed young man and found out -- I introduced myself, he was a Gunnery Sergeant, works -- he's the
investigator for the complex trial team.

And, I said, my goodness, I said to
the prosecutor, you don't have all of CID at your
disposal? You don't have all of NCIS at your
disposal? You have to get your own guy and dress
him all spiffy in this suit? I get nobody. I
don't have any investigator.

So, with all due respect, there --
it's more than a perception, at least, if you
look at the hard numbers, the Government does
have more resources than we have and we have the
same caseload. They file the charges; we have to
defend against them.

So, I would like to bring that to your
attention.

And, finally, Mr. Stone, to address
your question earlier about, if somebody is
acquitted at a court martial, there's a couple of
things I want to say.

One is, if the -- if somebody's
acquitted in a civilian trial, they might get
fired. You know, if somebody works for IBM or
the FBI or somebody else and their supervisor
doesn't like what he heard in the course of that
litigation, he can fire them.

    Because most states, or at least some
states, Texas where I live, is an at-will
employment state. Okay? So, you can be fired or
hired for any reason at all as long as it's not
illegal.

    We're not like that in the Military.
We're under contract. Okay? You can't be fired
for no reason at all. You can't be fired because
your boss doesn't like something that you do,
unless it rises to the level of misconduct or
some other specified basis in our regulations
that where the Service regulations authorize
separation for that.

    So, just mere fact of a supervisor
hears something in a court martial like, for
example, if -- of particular concern to me was
your comment that, well, if somebody exercises
his right to remain silent, maybe we should fire
him.
I hope you understand from a defense perspective, that was a little alarming to hear because if somebody exercises his rights to remain silent, he shouldn't be punished for that, including he shouldn't lose his employment and his retirement, all the things that we have as Members of the Military which distinguish us from civilian employees.

And then, finally, on that note, I'll mentioned that, I don't want to speak for the other Services, but my preliminary research is that, that situation wouldn't come up in the other three Services, the Army, Air Force or the Navy.

If an officer is acquitted of misconduct at court martial, then the other Services will not administratively separate that officer. But, the Marine Corps specifically has a provision in our rules that are relatively recent that specifically authorize administrative separation of an officer based on misconduct that the officer was acquitted of committing at court
martial. So, obviously, I have issues with that.

Again, that particular issue is beyond the scope of this hearing today, but I wanted to bring that your attention that, in the other Services, that wouldn't come up. He wouldn't be fired, if you will, for conduct that he was acquitted of at court martial, but in the Marine Corps, he could be or he or she could be.

So, with that, I'll answer any questions the Panel has.

Thank you.

CHAIR HOLTZMAN: Thank you very much, Colonel Zimmermann.

Now, we will hear from Commander Stephen Reyes, U.S. Navy, Director, Defense Counsel Assistance Program.

Commander Reyes, welcome and we look forward to your testimony.

CDR REYES: Good afternoon, Madam Chairwoman, Members, esteemed Panel Members, it's a pleasure to be back here before the JPP.

As you will see up above, I actually
had some slides I prepared to assist in my
presentation and I actually have some hard copies
since the glare. Would you --

CHAIR HOLTZMAN: Yes, I see it right
here.

CDR REYES: Can you? Okay.

CHAIR HOLTZMAN: Everybody can see
that?

HON. JONES: Yes.

CDR REYES: Okay, fantastic.

If we can just go to the next slide?

Specifically, to answer the question
regarding the training, I think before I actually
put some more meat on the bone for that, is talk
about the structure that defense counsel face
when they're at the DSOs because the structures
will provide -- it's kind of the on-the-job
training, the assistance when they're new defense
counsel that need some type of assistance from
other more experienced counsel.

So, this is the structure that an
attorney faces for encounters when they report to
the DSO.

The first thing I want to mention is that we have four DSOs that are headed by 06s and 05s.

What's unique about the Navy is that, we are trying to do a preference of detailing Military Justice litigation qualified individuals in the 06 and 05 ranks to act as CO and XO.

So, what this allows the CO to do, given job duties and responsibilities, it allows the CO to actually be detailed as a defense counsel to be in the court martial.

So, think about that, just from a perspective aspect. You have an 06 Colonel representing a Sailor who, this 06 Captain, Colonel, is very experienced, may have been a former Military Judge. But, we're assigning them to these 120 cases.

In addition is that, that CO also takes with him or her another corps defense counsel so they can provide on-the-job training.

So, on-the-job mentoring, on-the-job
training but, in addition, providing
representation to that client, to that Service
member.

The second bullet point is that every
senior defense counsel or OIC is an MJLQ
qualified person at the DSO.

I mean, take, for example, the
Bremerton office, and I just highlighted here,
what this means is that you have an individual
who is department head level leading the troops,
spearheading the training on a daily basis.

This individual has an LL.M. in trial
advocacy from Temple University. He was an AUSA.
He had a tour as a defense counsel, senior
defense counsel, senior trial counsel, trial
counsel and appellate clerk.

That's the person who's the department
head, who is doing the daily supervision,
training and mentoring of our corps defense
counsel.

And, this is duplicated in other
offices, too. We have an individual in Naples
all the way -- that takes care of the Europe AOR.

That person also has an LL.M. from George Washington, senior trial counsel, defense counsel.

These are the types of folks that we're putting in the department head level.

The third thing is the number of corps defense counsel are also MJLQ qualified.

So, I know there's an alarm going on in the back, I don't know if I should be alarmed. I guess it's stopped.

A number of corps defense counsel are also MJLQ qualified. So, this means is that they, in addition to their department head as being qualified, they also have been qualified, too, as well.

So, you know, if a new defense counsel comes in who has no experience whatsoever, they may have a commanding officer who is qualified. He also has a department head who is qualified, but their fellow junior counsel who's next door to them are also qualified, too.
The fourth bullet is the DCAP assistance on both East Coast and West Coast.

What we decided to do in the Navy is we separated our DCAPs. I'm located on the West Coast. We have also assets on the East Coast.

What this allows is that individuals can have access to DCAP assistance beyond their normal corps business hours. This also opens up the spectrum for folks in Japan overseas so they can have access to DCAP during their business hours as well.

Then, the one thing that Colonel Zimmermann had mentioned that I wanted to highlight is that our SharePoint database, and this isn't just some of computer program or website, it actually essentially acts as a virtual town hall.

And so, for instance, if something happens in Hawaii, say an issue comes up in Hawaii first impression or a counsel needs some help in Bahrain, what they do is, they essentially just post a question or a motion up
on our SharePoint site. Everybody in the entire DSO now has access to that. Everybody in the entire DSO can rally together and answer that question.

So, not only do they have their immediate supervisors, but they have the entire DSO writ large.

And, the last thing I'll mention is the support staff we have and Colonel Zimmermann had touched upon this.

We now have what we call defense litigation support specialists or what has been normally called defense investigators. We've hired them. We have eight of them. They are solely dedicated individuals to assist our corps defense counsel to investigate these highly complex sexual assault cases.

They're civilians, come with a number of experiences from law enforcement to defense experience.

And, they essentially clear the docket for our defense counsel so that they can focus
more on actual -- the lawyer stuff, preparing the
case, getting the training they need.

And then, lastly, the LNs that we have
are all graduates of the Roger Williams
University Paralegal program. So, that'll come
to be LPEP or paralegals. So, they also assist
with our corps defense counsel with that
expertise.

So, that's the structure this base.

And, this is kind of a busy slide,
this next slide and I won't talk amongst all of
the individual items in there, but that
demonstrates to you this is our continuum.

Colonel Zimmermann talked about the
program that the Marine Corps has, the Navy has
set up a continuum for all defense counsel. This
is what we would like all of our new defense or
our defense counsel and our new defense counsel
to go through during their three years at the
DSO.

The one item or the couple items I
want to highlight first is this FTJA program, you
see that on the -- on my left, I think your right, is that FTJA program is new.

It's called a First Tour Judge Advocate program. Every Navy Judge Advocate that comes out of our basic school goes through this two-year long program. That requires them to go through rotations through all of the departments, trial, command services, legal assistance and then defense.

What this allows the individual to do is get experience in representing clients in an administrative separation board hearing type procedure, the firing type cases or first rep. Someone comes in for NJP advice.

This allows them to get their -- cut their teeth stuff before they actually get an opportunity to work in a court-martial, so that when they do come to a defense service office that they have some defense experience dealing with clients and defense issues.

The other things I want to focus on, too, are these DCAP MTTs. We do -- my team goes
to every single DSO headquarters and major
detachments and we provide training every six
months on areas of concerns, trends that we're
seeing, new evolutions in the law, et cetera.

So, that provides a continuing legal
education aspect for the Navy counsel.

And, the last thing is that black line
that says weekly training, I mean, this is really
where the rubber meets the road here is because,
keep in mind, we have those experienced
department heads, those experienced COs with
LL.M.s, with the mass amounts of experience.

And, they're providing the weekly
training, you know, the weekly -- spotting the
issues and resolving those issues for the counsel
that work for them.

So, next slide, please?

And then, lastly, you had asked how do
we evaluate counsel?

I can tell you the first thing is
going to be the front line supervisors, the DSOs
individual assessments.
You know, we have experienced people there for a reason to provide experience and also knowledgeable critique and criticism of counsel.

The second thing we have, are these quarterly Military Judge debrief sheets. Every quarter, we get DCAP and TCAP both get compiled. Debrief sheets from the Military Judges and then we design our training in accordance with what are the errors that we're seeing from the Military Judges.

And, the third way that we're able to evaluate our counsel is DCAP evaluations. We do onsite assessments.

Keep in mind, we are on the East Coast and West Coast, so we can kind of go to different offices and see how counsel are doing in court.

And then, lastly, every six months, we go to these offices and we actually go into the trial and observe cases if they happen to be going on at that time.

So, subject to your questions, Madam Chairwoman, that ends my presentation.
CHAIR HOLTZMAN: Thank you very much, Commander.

CDR REYES: Thank you.

CHAIR HOLTZMAN: Judge Jones?

HON JONES: Actually, one of the things that we were concerned about, as I mentioned in my past question was the perception, at least, that defense resources were not what they should be and there was a disparity.

You know, the model in the civilian world with federal or state defenders versus prosecution, and let's just take one example which was just discussed, which is how many investigators or what investigative resources are available isn't really very good either.

But, I think you said you had eight investigators available to you, Commander Reyes?

CDR REYES: Yes, ma'am.

HON JONES: Could you use more?

CDR REYES: Yes, we can.

HON JONES: Okay.

And, if I asked that question of
either of you gentlemen, Colonel Brookhart or
Colonel Higgins?

   COL BROOKHART: Definitely, ma'am, we
could -- we have no investigators and we could
certainly use them. We have a plan in place
where we're -- we'd like to see around 20 to 24
investigators, but that's still in its infancy.

   HON JONES: Well, even in the civilian
model, there's more than zero.

   COL BROOKHART: Yes, ma'am.

   COL HIGGINS: Likewise, the Air Force
does not currently have dedicated defense
investigators. We're looking at the question.
We would love to have it, but as of today, no, we
do not have it.

   HON JONES: There may be other areas
as well just in terms of -- I mean, is there --
are there enough defense counsel?

   I mean, obviously, your counsel are
showing up for every contested trial, so they're
there. Are their caseloads higher?

   COL BROOKHART: Yes, ma'am.
HON JONES: I'm sorry, I can't see
your faces, either, so I'm kind of lost.

COL BROOKHART: This is Colonel
Brookhart.

HON JONES: Okay, Colonel, thank you.

COL BROOKHART: Yes, my biggest
challenge in terms of resources is not financial.
We get about a quarter of the budget that the
Government gets, but it's enough for our
training. It's enough to train the counsel I
have.

My biggest challenge is in manpower.
So, when the RSP met just 2014, there were
authorized billets for 154 defense counsel. Now,
the number of authorized billets is down to 44.

So, as part of the downsizing, we've
lost some of our billets. But, that's only part
of the problem. I can't fill all the billets
that I have.

So, right now, out of those
authorizations, I have about 135 counsel on hand
when I should have 144.
So, and in terms of experience, I'm facing pressure, too. Thirty of those counsel out of that 130 have no prior experience at any level and, with the advent of the Special Victims Counsel program, I'm forced to compete for qualified experienced counsel with that program and it's a battle we're losing.

They will -- I think their head will be here and they'll tell you that this latest cycle of bringing people into that program, they all have some prior experience.

Whereas, our numbers of inexperienced defense counsel have gone up. So, we've set up a situation where, you know, the accused in a given case might have less experienced counsel than the victim has in that case, which is concerning to me.

Which is also why training is so important to us. But, if I had, you know, there's a challenge that training can't solve and that's just the numbers of cases.

Unlike a federal public defender's
office or a state defender's office, we don't
just have the courts-martials. We have to
represent counsels at these lower level adverse
actions.

We, I think, last year saw over 20,000
clients for Article 15s and other 200,000 for
administrative separation. That takes up a lot
of counsels' time, too, in addition to the courts
martial part of their practice.

So, that is a significant area of
under resourcing on the Army side.

HON JONES: How about the Air Force,
Colonel Higgins?

COL HIGGINS: Yes, ma'am.

You know, we, like Colonel Brookhart
said, we see about 230,000 client visits a year
on everything. I've got 107 defense counsel to
handle that.

But, I think that's sufficient. I
mean, I'm a 100 percent manned in defense counsel
and I have been for the entire three years I've
been in --
CHAIR HOLTZMAN: Can I just interrupt for one second? I would really appreciate when you refer to -- that we try to speak with gender neutral language. I don't mean to pick anyone out because I think this has happened before. But, I think, you know, we're now in 2016 and we can manage that.

Thank you.

COL HIGGINS: Very good.

I have 107 defense counsel. We are at a 100 percent of our Manning document.

CHAIR HOLTZMAN: Can you say personnel?

COL HIGGINS: Personnel.

CHAIR HOLTZMAN: Staffing?

COL HIGGINS: Staffing.

CHAIR HOLTZMAN: Things like that.

COL HIGGINS: Very well.

CHAIR HOLTZMAN: Thank you.

COL HIGGINS: We are -- I don't need more counsel, in all honesty. A lack of counsel is not something that keeps me up at night. We
are well staffed.

   Likewise, our training budget is more
than adequate for our needs. I believe we are
very well resourced, in all honesty.

   HON JONES: And, I'm sorry, did you
already respond to the investigator resource
question?

   COL HIGGINS: To your last question,
yes, I think I did, ma'am.

   HON JONES: You said you could use
more?

   COL HIGGINS: We don't have any. We
proposed, you know, there's been a proposal
floating through the system to get some and we'd
love to see that approved.

   HON JONES: Thank you.

   CHAIR HOLTZMAN: Admiral Tracey?

   VADM TRACEY: So, it did sound as if
Air Force has more robust program for defense
than the others who spoke here today and that it
parallels the structure that you have for trial
counsel.
And, you get your defense counsels out of the trial counsel, did I understand that correctly, Colonel Higgins?

COL HIGGINS: Yes, ma'am. I'll have to let the other services decide if we're more robust than they are, but we do pull experienced counsel, hand selected from among the best prosecutors, absolutely.

VADM TRACEY: Could I ask, Colonel Brookhart, you said about 20 percent of your defense counsels come with no experience?

COL BROOKHART: Yes, ma'am.

VADM TRACEY: For that 20 percent, given your situation, for that 20 percent, are you able to do the sort of parallel processes that Air Force uses where there's a senior defense counsel who sits with them and they second chair for so many trials and so forth before they're on their own?

COL BROOKHART: Yes, ma'am. That's how we have to approach it. We don't have a structured formalized way to achieve that
objective, but, in practice, that's how the
senior defense counsel do it.

We always put those people in a bigger
office so they're surrounded by more personnel,
more experienced counsel and they can gain
experience that way and be slowly brought along
until they're capable of doing defense work on
their own.

VADM TRACEY: And, do you have highly
qualified expert participation?

COL BROOKHART: Yes, ma'am, we do. I
just don't -- and my defense counsel assistance
program has two highly qualified experts.

VADM TRACEY: And, the trial counsel
has a similar --

COL BROOKHART: The trial counsel
assistance program has three and then there's one
that's sort of serves as a general function for
either side.

VADM TRACEY: Okay. And, I have no
other questions.

Thank you.
CHAIR HOLTZMAN: Mr. Stone?

MR. STONE: Yes. I heard two of you who presented say that the sexual assault prosecutions make up, I think you said, the largest proportion of your cases that go to trial. Why is that?

It strikes me as really odd. There are so many different kinds of crimes in the Military. Do you have -- can you enlighten me at all with what you think, any of you four who would like to comment on it?

COL BROOKHART: Well, for one, it's an area that's, obviously, you're here because it's received so much interest and attention, and rightly so. It's something that -- a problem that the military is looking to solve.

That's going to create a force in function to bring those cases forward.

But, we also have implemented, at the direction of Congress, a referral system that I think it serves to expedite a lot of cases to trial, sexual assault cases to trial.
Because a Commander, if he elects not to send the case to trial, then it has to go to the next higher headquarters or possibly all the way up to the Secretarial level for a second look.

And, I think there's a reluctance to have that happen. And, as a result, the easier course of action is just to send the case to trial.

COL ZIMMERMANN: I second all of that.

I believe, and again, please let me be clear, sexual assault or any crime against another person is not okay. We are not here to say that people who actually commit sexual assault should not be punished for that.

But, my perception from both my Military and my civilian practices is that we have incentivized people to come forward with claims that may not be, let's call them, a 100 percent accurate.

We have also incentivized Commanders, as Colonel Brookhart said, to send everything to
trial to protect themselves.

And, I don't say that lightly. I
don't like to ever accuse another officer of not
having the moral courage to do the right thing.

But, I am personally aware of Generals
who have made the comment, I don't want to be the
next General Franklin. Okay?

So, there is a perception, and I think
also a reality that Commanders are fearful for
their own careers if they do not send these cases
to trial.

And, again, my personal analysis, and
I'm speaking in my purely personal capacity here,
is that, for -- I've been practicing Military
Justice since 1993 and I've seen the Military
prosecute cases that I don't think a civilian
prosecutor would take to trial.

And, I think a lot of the -- the
majority of that time when I was a young lawyer
and a prosecutor, I thought it was the right
thing to do, even if I didn't necessarily think
it was the strongest Government case, I thought
it was the right thing to do to let the jury
decide.

In fact, I had a Commander once tell
me when I told him I wasn't worried about maybe
not being -- having the strongest case, he said,
well, that's why God made juries. Okay?

So, I think that the Military has
always been very pro-complaining witness, has
always wanted to err on the side of caution. If
there's a complaint out there, let's fully
investigate it. Let's let the legal process take
its course.

And, I think that the pendulum, in my
personal opinion, has just swung too far the
other way where we have this culture of believe
the "victim" before she's even determined to be a
victim.

I mean, again, beyond the scope of
this Panel, but using the word victim for
somebody who there's been no adjudication
whatsoever by any administrative or judicial body
that a crime even occurred; we have a culture now
that supports people who make claims.

In my own personal practice in the past two months, I have litigated a case where a woman waited 17 years to report a rape and another one where she waited eight years.

Now, that alone does not have anything to do with the merits of the case. They could have been very legitimately raped 17 years ago, eight years ago.

But, what I'm saying is, there's incentives now to, you know, expedite a chance for financial, VA benefits. There's incentives now for people to report.

And, God bless them, if they were really, truly assaulted, I want them to come forward. I want the process to work for them. We should protect them.

But, I honestly believe that there are some claims being made that are not accurate and it's all tied together, right, because, if you don't have the resources to adequately investigate these cases, you can't necessarily
expose the weaknesses in the Government's case.

And then, the whole thing with Article 32 being rewritten, I mean, the Article 32 investigation used to be a way for not only the defense to learn about the case, but also the prosecution. A lot of cases didn't go to trial after an Article 32, not because the "defense" won but because the prosecutors saw the weaknesses in the case and decided to handle it a different way.

That's not happening so much anymore because the process has been so streamlined, it's almost to the point of, if somebody makes a claim, it's presumed to be valid. It's going to be blessed by an Article 32 and it's got to go to trial because no convening authority wants to put the brakes on it.

I hope that answered your question.

MR. STONE: Well, if we can just stay with that a second, I mean, victims have complained that, oh, these go to trial as opposed to other kinds because, having been traumatized,
it's easier. They're walking around with PTSD.

It's easier to get them to cry or pull out of the case totally.

So, I mean, they have a slightly different view of why so many go to trial.

Do you think that perhaps in this narrow category of cases or maybe in a broader category, since the Military can set a lot of its own rules, we should have lie detectors admissible vis-a-vis victims, maybe victims and defendants to cut the number that are going to trial?

COL ZIMMERMANN: That's a fantastic question, to be honest. I haven't thought about that.

I use polygraphs in my private practice. They're not admissible in court, but they can be useful. They can be presented to a convening authority at pretrial. They can be presented in an Article 32 if the preliminary hearing officer will accept it, of course.

Things are changing now.
But, I don't know that I would ever mandate them because it is still not an exact science. It's helpful, I think, but not dispositive.

So, I would hesitate to say the case can't go to trial unless the alleged victim passes and the accused fails, but --

MR. STONE: No, I was just responding to your comment that that might give commanding officers more comfort in deciding in a close case not to go forward. That they'd say --

HON JONES: I don't know.

MR. STONE: -- well, the person hasn't passed a lie detector and so, it's a close case but that, you know, does not push me over the edge into sending it for prosecution.

I'm trying to think where -- oh, in clearances all the time, people have to take a lie detector test. It's not dispositive, but it pushes the -- it has a lot to do with the administrative determination.

And, I think the administrative
determination's outside of just a pure prosecution's have to be looked at because this is taking up such a large part of the trial docket, at least according to you, and it sounds like it, an inordinately big piece of the trial docket.

COL ZIMMERMANN: It is and I think that's a really interesting question. I'm not sure that our courts or our personnel are ready to go quite there where we mandate it in every case, whether it's dispositive or not, I'm not sure we're quite there.

But, I think it can be used as a tool in the appropriate case on a case by case basis. And, the problem is, if these active duty counsel don't have access to a private polygrapher, if they're going to have their client polygraphed, it's going to be by a law enforcement polygraph examiner.

MR. STONE: CID would have to do it.

COL ZIMMERMANN: So, and there's a whole bunch -- I mean I think you could have a
whole hearing on that. I don't know that that's
the best solution.

I not -- I personally will not let a
client take a polygraph from a Government
polygrapher unless I had him polygraphed by an
expert that I chose. That's just me.

So --

MR. STONE: Does anybody else think
that that's an interesting line of inquiry that
we ought to --

COL BROOKHART: Sir, I would just say,
years ago, I was a -- after being a trial
counsel, I was a legal advisor to a Military
Intelligence Command and I got to meet several
counterintelligence polygraphers. And, they have
a very different view on the reliability of the
polygraph compared to a CID polygrapher.

So, I asked him a lot about that
because if you ever meet a CID polygrapher, they
believe it should be absolutely admissible and
it's almost infallible.

The counterintelligence polygraphers
would tell you the Russians have ten different
ways beat it and it's not very reliable.

You know, it's just one of many tools
that we use for counterintelligence. So, I would
think it's not nearly reliable enough and it
would be unfair, I think, too, to expect a victim
to undergo a polygraph just as it would to direct
an accused to undergo a polygraph.

MR. STONE: I thought maybe you were
saying the point is that we should keep Russians
out of the U.S. Military.

COL ZIMMERMANN: Well, because it also
infringes on the right of the accused to remain
silent. I mean, that goes without -- I didn't
say that out loud because that goes without
saying.

You couldn't mandate the accused to
take a polygraph because he doesn't have to say
anything at all.

MR. STONE: Should we let victims
volunteer to take a polygraph in a closed case?

COL ZIMMERMANN: Should we let them
volunteer?

MR. STONE: Yes, if they want to.

COL ZIMMERMANN: I think so, of course. And, I'm not sure that that's not done.

I think sometimes victims volunteer to take polygraphs. I don't know that they're always given.

MR. STONE: Okay. The other question that I had, three of you spoke about these administrative separations taking up a large part of your time and I do want to touch on that.

As it was mentioned, I touched on it before, I mean, I believe that if a Military officer refuses to take a drug test and he's prosecuted for possession or dealing drugs in a large amount, he can be acquitted and still separated even though he refused to take the test and/or testify.

And, I guess, I'm curious to know, other than the Marine Corps, have the other services thought about what the Marine Corps just said, it's now instituted that it looks at
separations in acquittals and whether you think there's any standards review of that going on with respect to whether, you know, absolutely, in a civilian sphere, the failure to testify is a consideration that's allowed when the FBI or the Bureau of Prisons or some other sensitive organizations, intelligence organizations, where you have clearance when you refuse to do it even if you're -- whether you're convicted or acquitted.

Because they realize, that that says something about your ability to function. If you came into that superior or commanding officer and said, when he wanted to question you, what happened here? We're not prosecuting, but you said I'm not talking. You'd wind up with a changed assignment for sure.

So, I'm just wondering whether anybody's looking at that or if you think that's an issue that might resolve some of the cases that are more difficult that a person might say, I want, you know, I need to be in a different
unit. I don't want to talk about it. I may not
think there's a rape but I don't want to talk
about it.

And, not necessarily separation, but
some other administrative proceeding would be
helpful.

COL HIGGINS: This is Colonel Higgins.

I would not be in -- I'm not aware of
the Air Force looking at this. I would
personally not be in favor of something like this
which would seem to punish an individual for
exercising their right to remain silent.

As I think the defense counsel in me
talking, I don't think that would be an
appropriate response from the Government to take
somebody and say, because you exercised your
constitutional rights, we're now going to take
some sort of other adverse action against you.

MR. STONE: Do you have any problem
then doing it in a drug case?

CHAIR HOLTZMAN: Excuse me, sir, you
asked a question, let the other person finish.
MR. STONE: Yes, sure.

CHAIR HOLTZMAN: And then we'll finish -- conclude this line of questioning.

COL BROOKHART: I tend to agree that I don't think we necessarily want to punish someone for exercising a constitutional right. And, I don't know what happens in the prison system or the FBI. That sounds like it's possible.

And, I think it's just a matter of administrative due process. If it meets the Goldberg v. Kelly standard, then I think you could do it and we probably could do it in the Army.

But, I'm not aware of any push to do that at this time.

CHAIR HOLTZMAN: Thank you.

I just want to ask a few questions now because I'm very concerned that the area that was raised by Judge Jones which is adequacy of the representation of defendants in the Military in sexual assault cases.
Now, because I understand that you
don't have your own investigators. Maybe I'm
incorrect here, but I understand that you don't
have your defense counsel now may not have its
own or they may not have their own investigators.

But, you can ask the prosecution or
the Government, if you will, to supply
investigators. Is that how it works?

CDR REYES: Yes, yes, ma'am.

COL ZIMMERMANN: And they always say
no.

COL BROOKHART: Yes, ma'am.

And, in the Army, they'll supply them
by contracting that it with them. It's not
possible in the Army to have a CID agent sort of
some over and serve as a defense investigator.

Their regulations prohibit --

CHAIR HOLTZMAN: So, what's the
problem with this system?

COL BROOKHART: One problem is I have
to ask for the money --

CDR REYES: Yes.
COL BROOKHART: -- in the first place.

I shouldn't have to go to the Government and ask for that money.

The second problem is --

CHAIR HOLTZMAN: Okay. Can you explain that?

COL BROOKHART: Yes.

CHAIR HOLTZMAN: I mean --

COL BROOKHART: Yes, the Trial Defense Service --

CHAIR HOLTZMAN: I'm not understanding, but I want a --

COL BROOKHART: Yes, ma'am, no I understand.

CHAIR HOLTZMAN: -- this on the record.

COL BROOKHART: Trial Defense Service does not have an independent funding for anything other than travel to and from courts martial and training. So, I don't have any way to fund an investigator. We rely on the convening authority.
CHAIR HOLTZMAN: You want to ask for one, but why don't you want to ask for one?

COL BROOKHART: Oh no, we do want to ask. We encourage our counsel to ask for one. We've drafted the request in briefs for them to ask for investigators.

CHAIR HOLTZMAN: So, what's the problem with the system?

CDR REYES: The reason why -- one of the fundamental problems, and this is why the Navy went to its own --

HON JONES: I'm having a little trouble hearing you.

CDR REYES: Yes, ma'am, I'll speak up.

CHAIR HOLTZMAN: Maybe use the mic.

CDR REYES: Yes, I guess this is just recording.

One of the fundamental problems with that structure essentially is that you have to, in order to get investigators or prove to the convening authority you have to demonstrate why you need them. What's the relevance? What's the
necessity?

So, you have to say, I need to speak
to this witness and these are the questions or
these are the topics that I need to talk about.

So, while you're doing that, you're
intimating to both the prosecution as well as the
convening authority the strategy of your case.

So, often times, and there have been
occasions where this has happened in the Navy and
in Coast Guard cases where we would inform the
convening authority our investigative structure
and planning and, come to find out, some of the
law enforcement investigation goes to those
witnesses before we had an opportunity to get
those approved to talk to our witnesses.

That's the fundamental problem with
asking the prosecution for investigators.

CHAIR HOLTZMAN: Okay. So, that's one
problem.

Do you -- are your -- I think, Colonel
Zimmermann, you said these requests are always
turned down. Is that always true?
COL ZIMMERMANN: I may have overstated. I believe that they're granted much more liberally in the capital litigation context, mitigation experts for sentencing.

I just litigated this.

CHAIR HOLTZMAN: I'm talking about sexual assault cases only.

COL ZIMMERMANN: I have never seen an investigator granted. That doesn't mean it's never happened --

CHAIR HOLTZMAN: In a sexual assault case?

COL ZIMMERMANN: Correct. That doesn't mean it's never happened, but I'm not personally aware of it, but it's very infrequent if it happens.

CHAIR HOLTZMAN: Can the others comment?

COL BROOKHART: Yes, ma'am. We did sort of an informal survey over a number of months of our counsel making these requests and whether they were approved by the Judge or by the
1 convening authority.
   
   So, if the convening authority says

2 no, our next step is to file a motion with the
3 Trial Judge and hope that he will order the
4 convening authority to provide that expert
5 assistance.

6 And, we found about one in 12 was
7 approved in sexual assault cases.

8 CHAIR HOLTZMAN:  And, Colonel Higgins,
9 do you have your response?

10 COL HIGGINS:  Yes, ma'am. In the Air
11 Force, our own kind of internal look at this is
12 similar to what the Army has found is that it's -
13 - they're very infrequently granted.

14 CHAIR HOLTZMAN:  And, Commander Reyes?
15
16 CDR REYES:  That's the same, too.
17
18 That was one of our bases for doing that as well.

19 CHAIR HOLTZMAN:  Let me ask you
20 another question. Is this a depravation of due
21 process for defendants?

22 COL ZIMMERMANN:  Yes, ma'am.

COL BROOKHART:  Yes, ma'am. I think
if you look at the federal and state case law on
the obligation of a defense counsel to
investigate his case and how we accomplish that
obligation, I would be very concerned that we're
not meeting that standard.

CHAIR HOLTZMAN: Colonel Higgins?

COL HIGGINS: I think that's the
argument we're making that it is a depravation of
due process. I don't think the appellate courts
are agreeing with us.

CHAIR HOLTZMAN: Have you -- oh, so
you're making the argument in individual cases?

COL HIGGINS: Yes, ma'am.

CHAIR HOLTZMAN: Has anyone every
brought a suit against -- outside the -- a class
action case, for example? Or, is that beyond
what you do in defending your cases?

COL ZIMMERMANN: We don't have
authority to file civil lawsuits. And then you
have the --

CHAIR HOLTZMAN: I'm sorry?

COL ZIMMERMANN: We don't have
authority as defense counsel to get involved in any civil litigation or file any lawsuits.

And, I'm not expert in the Federal Tort Claims Act, but I would assume that the Government's probably immune from such -- they have not waived their immunity on that. But, I could be wrong on that.

But, it is beyond the scope of what we're permitted to do as defense lawyers in uniform. Some other law firm, civilian law firm would have to do that on our behalf or on the Service member's behalf.

CHAIR HOLTZMAN: I see. And, none of these motions -- how many times have you made such a motion for a due process claim?

In other words, any inadequate resources? Do you have any idea?

COL HIGGINS: I don't know, ma'am.

COL BROOKHART: No, ma'am, I don't know the exact number of times it went to the Judge versus the convening authority. So, I'm not --
CHAIR HOLTZMAN: And, you've raised it on appeal?

COL BROOKHART: And, I'm not aware of any appellate case on the defense investigator that's been successful.

There are some appellate cases where other investigators were denied at the trial level and in appellate court found that was error.

I can't think of a single one where it dealt with a defense investigator, usually psychologists or accident type investigator.

CHAIR HOLTZMAN: I'm sorry, just one more question.

Then, why hasn't it been raised in the appellate context?

COL BROOKHART: I have to assume it has, it just hasn't been successful, ma'am. The standard I don't think is particularly hard for the Government to meet.

CHAIR HOLTZMAN: And, there's no opinion on this? So, I mean, the fact that
you're telling -- that's what I'm having a hard
time understanding.

The courts haven't addressed this?

It's not referred to in an appellate decision?

Or it hasn't been raised on the appeal? I don't

--

COL BROOKHART: Yes, ma'am. I can't

answer that for certainty.

CHAIR HOLTZMAN: I'm having a hard
time understanding what the exact posture of this
issue is on the appellate level.

CDR REYES: Ma'am, to your question

with respect to sexual assault cases --

CHAIR HOLTZMAN: Yes?

CDR REYES: -- that question is still

first impression. So, there isn't any hard CAAF
case where there's -- or NMCCA case for our
branch.

But, with respect to defense

investigators, there have been opinions, mostly

related in the death penalty context that talks

about the need for defense investigators.
Now, all defense investigator requests or motions have fallen in the rubric of a due process, at least in the Navy, from a due process claim. Those have not made it in the sexual assault context have not made it to either the Navy or Marine Corps Court or to the CAAF.

CHAIR HOLTZMAN: And, I'm sorry, I just have one further question.

Has the issue of adequacy of the defense counsel and workload and the authority of your personnel to raise the issues and handle the cases, have those been raised before the Military courts?

COL BROOKHART: I'm not aware of a specific case where it has been.

CHAIR HOLTZMAN: Okay, I don't have any further questions.

COL ZIMMERMANN: Ma'am, if I might? In addition to being a due process violation, I also believe it's a Sixth Amendment right to counsel issue because I can't do my job as a Military defense lawyer --
CHAIR HOLTZMAN: Have you raised this?

COL ZIMMERMANN: I think it has been raised and I don't -- and I've made myself a note to do a Westlaw search later and I will submit something to the Panel.

CHAIR HOLTZMAN: Thank you.

COL ZIMMERMANN: Because I just don't want to say anything off the top of my head that's not correct. But, I know it hasn't been successful because we are where we are.

CHAIR HOLTZMAN: Okay.

Thank you again very, very much for the presentation and your testimony. We very much appreciate it.

We can take five minutes, really five minutes and then we'll come back.

Thank you.

(Whereupon, the above-entitled matter went off the record at 2:21 p.m. and resumed at 2:21 p.m.)

CHAIR HOLTZMAN: Thank you very much everyone.
We're now up to our, I think it's our last panel which will provide an overview of training and experience of Sexual Victims' Counsel.

And, I guess we're going to start with another person who's a glutton for punishment, Colonel Andrea deCamara, U.S. Air Force, Chief, Special Victims' Counsel Division.

We very much welcome you here and thank you, again, for the help you gave to the Panel in the last session by joining with your colleagues in giving us a draft of legislation, which is really extraordinary beyond and above the call of duty endeavor on your part for which we're very grateful.

MR. STONE: Yes, at our request, we pushed you. Sorry.

CHAIR HOLTZMAN: At our request, exactly, exactly. So, we welcome you and thank you very much for being here.

COL DECAMARA: Thank you, Chairman Holtzman, Panel Members.
I was honored to be asked back to talk
to you today about the Air Force Special Victims'
Counsel and Special Victims' Paralegal Training
that we currently conduct.

The Air Force provides training to our
SVCs and SVPs, I know I heard earlier today that
people, I think the Navy calls their folks SVPs.

For the purposes of my talk, SVP is
our paralegals because we do have specific
paralegals that are part of our team.

The Air Force provides comprehensive
and continuous training through formal in-
residence courses, distance learning including
uses of DCS and VTC technology, attendance at
nationally recognized victim advocacy conferences
and symposiums, regionally developed joint
seminars and internal online lessons learned

First, as you heard earlier today from
our Commandant, Colonel Davies, the Air Force JAG
School provides several comprehensive formal
courses for SVCs and SVPs.
As required by Air Force instruction, all incoming SVCs must attend a certification training prior to representing clients to the extent practicable.

This is accomplished either through attendance at the Air Force or the Army Judge Advocate School courses.

There courses provide comprehensive instruction including lectures, seminar and practical application exercises.

I will speak more about the recent development and content changes of the course later in my remarks.

In addition to the certification courses, the JAG School offers five intermediate sexual assault litigation courses, or ISALCs, as you heard Colonel Oler refer to, a year, which SVCs have a curriculum tailored to their unique challenges of victim representation.

Assault courses are aligned with the five judicial circuits and are conducted at a base within each circuit so trial practitioners
within that circuit can collaborate and discuss common issues.

The circuits senior SVC as well as myself and one other SVC leader attends each ISALC to ensure leadership perspectives and mentoring as part of that instruction.

The informal feedback of the senior SVCs is that ISALC is incredibly helpful to the SVCs in their continued development and their advocacy role of their clients.

Additionally, each year, six Special Victims' Counsel participate in the Advanced Sexual Assault Litigation course held at the Air Force's JAG School.

This innovative course provides exceptional instruction to SVCs to further refine their litigation skills in aspects of the trial, including pretrial investigative interviews, motions practice and sentencing arguments.

In addition to these formal courses, the SVC program also endeavors to send every SVC and SVP to at least on national advocacy
organization training conference each year.

Examples of such forums are NCVLI,
NSEC, EVAWI or regional or state courses such as
TAASA and CALCASA.

These established training courses
provide SVCs opportunity for outreach to victim
resources located within their states or that
their clients may be eligible to receive.

They encourage an understanding of
successful mechanisms for representing clients
and cross feed of best practices from outside of
the Military.

Our SVCs have also been frequently
asked to present on their successes and best
practices at these venues.

Our European region collaborated with
the other services to host a joint European
SVC/VLC training symposium that allowed those in
the European region to collaborate on tactics and
techniques for representations of clients in the
OCONUS environment.

All those who attended thought it was
especially useful and allowed for a cross flow of information between the Services as cross Service representation when the accused and victim are from different Services happens seemingly more frequently OCONUS.

Several Air Force SVCs also attended and participated in the Navy led Legal Assistance Medical Evaluation Board training held last fall.

By all accounts, this training was also fantastic and provided practical information when a client has medical issues that interfere with their continued service resulting from the sexual assault.

Our SVC program also relies on internal training through technology such as DCS and VTCs. The program holds biweekly training sessions to enhance SVCs' knowledge based and advocacy skills.

Our paralegals also hold paralegal-specific training via VTC every Friday to ensure they are satisfying Air Force training requirements and remaining current with SVC
Finally, SVCs and SVPs actively post comments on our internal cohort website that allows for immediate cross feed of lessons learned and best practices.

Since November of 2014, the SVC courses curriculum has dramatically changed. Prior to this time, the SVC discipline was so new to the Military that much of the instruction focused on advocating for standing, program authority and basics of client representation.

Since then, the dynamic nature of the practice, the advances of victims' rights and expansion of the SVC program either through case law or legislation necessitated continual comprehensive review and changes of the course. First, we added three days of child representation instruction to our SVC course. Unlike the Army, the Air Force combines the initial SVC certification course with the child representation block.

While the advantages of having the
courses -- while there are advantages of having
the courses separate, the Air Force prefers a
combined course because it allows SVCs to be
prepared for child clients from the start of
their assignment and ensures they receive
training.

We have found that it can be difficult
to send the SVC back for a week long course after
the SVC has begun representation with scheduling
conflicts such as courts, Article 32 and other
client needs.

Second, this year, we've added almost
three hours of instruction regarding DoD civilian
representation.

We are very concerned that our SVCs
can competently represent their civilian clients.
And, once this became required by Congress, this
competency became an important part of the
curriculum.

We have also added sections such as
vicarious trauma to alert SVCs and SCPs to the
impact that this representation may have on them
and the importance of taking care of themselves and each other.

Because mental health records are so prevalently requested, we added a block on how to read mental health records and what some of the basic diagnoses mean.

Retaliation and ostracism is something encountered by our clients and has been highlighted by Congress as a concern.

As such, this has been added at all our courses including revisiting the topics at each ISALC and ASALC to ensure SVCs are best prepared with the techniques to deal with this issue.

With the changes from the NDAA as well as the recognition of the potential for post-trial advocacy and writ appeals, we have also added blocks at ISALC and the SVC course with regard to writ appeals and post-trial matters.

Specifically, we have three blocks, one on post-trial, clemency and parole, one on writ appeals and one on an appellate update.
As the centerpiece in the Air Force's SVC course, we also strive to bring in at least three SVC client teams to provide a client-based perspective on the representation and how an individual SVC helped them in their case.

The SVCs are then able to act as peer mentors for the incoming SVCs.

The certification is also joint in its development and execution. Since 2014, adjunct instructors from all the Services have assisted in teaching and facilitating the course.

This is especially important as only the Army and Air Force JAG Schools provide certification courses.

The school provides Service-specific source documents to all the students on the JAG's campus website and are available for months after the course for easy access and reference.

Air Force JAGC training is managed by the Judge Advocate General's Office of Professional Development. I coordinate with them and the JAG School to ensure all our SVCs get the
formal training at the appropriate time, such as
the SVC certification course, ISALC and ASALC.

But, I also manage the informal
training mentioned, such as the biweekly DCSs
regional conference and attendance at civilian
advocacy conferences and trainings.

The Air Force has focused on enhancing
the staffing of our training capability. The
JAGC has recently added a new civilian position
at the JAG School and I'm sure you heard Colonel
Davies speak earlier about the responsibilities
of Mr. Stout.

We have worked closely with him on
course development administration. And, while he
belongs to Colonel Davies, he is plugged into my
leadership team intricately, participating in my
biweekly leadership huddles and our biweekly
trainings.

He brings a wealth of experience and
knowledge to our SVCs and our SVCs regularly call
on him for support and advice.

Next, one of the questions you had
earlier was about how SVCs are being integrated into next assignments and moving on.

Over the past three assignment cycles, a graduated SVC has moved into a faculty position at our Air Force JAG School which is considered a very prime position for a Captain.

These former SVCs provide unique perspectives and capabilities and are relied upon for course development and execution as well as peer mentors.

And, additionally, as of today, I have a senior SVC located with me at Joint Base Andrews who is responsible for outreach among other responsibilities.

In this capacity, she will ensure continuing contacts with civilian advocacy organizations and she coordinates attendance at such training opportunities and disseminates information to our SVCs through internal cohorts and websites.

We also utilize our senior SVCs to provide instruction at all of our SVC-specific
courses.

The Air Force employs several methods
to determine effectiveness of training courses.

First, the Air Force JAG School
requires all students to provide end of course
critiques. This provides immediate feedback
while the material and teaching methods are fresh
in the minds of the students.

Then, approximately six to 12 months
after attendance, the school sends students a
post-course assessment survey. This survey
utilizes the Kirkpatrick Level III Graduate
Assessment and responses are used to shape course
methods of instruction.

Students are evaluated also during
practical exercises and small group seminars.

Senior SVCs then periodically travel
to observe their counsel during Article 32 and
courts-martial.

The senior SVC evaluation of the SVCs'
performance is then used to shape future
training, both formal courses as well as our
internal biweekly training.

Lastly, the SVC program does not manage staff or evaluate the training of Military Judges. Because I have no authority over them, I posed your question to the Air Force's Chief Trial Judge. The following is a synopsis of his response to your question.

All in all, since November of 2014, the Military Judges have transitioned from viewing the SVC as some "new program" to a program that is respected and expected in many courts.

Military Judges are focused on treating all the players courteously and respectfully and the Chief Military Judge teaches that way as well to both new Judges and the currently assigned Judges.

It is certainly more robust and it is very practical and it has matured.

Three notable trainings include, AFCAT, which was conducted in August 2015. This was the Air Force -- this Air Force Judge focused
training with one hour presentation by the SVC Program Chief, myself, and then an hour of discussion with just the Military Judges regarding SVC interaction and methodology type scenario-based questions.

Next, in 2016, the Military Judges participated in the Joint Military Judges Training with Military Judges from all of the Services and included an hour long plenary session and then a 45 minute Air Force specific breakout discussion of SVC interactions.

Then, in April 2016, the new Judges course hosted at the Army JAG School had the first two weeks focused on issues related to sexual assault.

The Military Judges watched MRE 412 and MRE 513 demonstrations from start to finish. The scenario included an SVC.

Additionally, the Judges were tasked to prepare instruction and motion rulings in the case on both the 412 and 513 issues.

There is a one-hour Army led block
focused solely on SVCs and in the Air Force
specific breakout the Chief Trial Judge spent an
hour on SVC issues, including methodology
problems.

That is taken from Chief Judge Vance
Spath.

Again, hopefully, I answered your
questions posed to us and I thank you for the
opportunity to speak to you today about training
and I look forward to answering your questions.

CHAIR HOLTZMAN: Thank you very much,
Colonel.

Next, we'll hear from Colonel
Katherine McDonald, U.S. Marine Corps, Officer-
in-Charge, Victims' Legal Counsel Organization.
Colonel, we welcome you and look
forward to your testimony.

COL MCDONALD: Well, good afternoon,
Madam Chair and distinguished Panel and thank
you, again, for another opportunity to appear
before you today to describe the training of
Marine Corps Victim Legal Counsel.
The Marine Corps Victims' Legal Counsel training program consists of three general types of training, certification training, annual training and what we call sustainment specialized training.

I'll first address certification training in summary.

Before a Judge Advocate is certified to represent victims, the Judge Advocate must complete an SVC/VLC certification course at either the Army or the Air Force JAG Schools.

With annual training, approximately six months after certification, all VLC, paralegals and Military legal specialists attend advanced training at the Marine Corps annual VLC symposium.

The symposium consists of three days of victim-focused training with an emphasis on current legal issues and developments in our victim legal representation and practice, professional responsibility and victimology.

Sustainment specialized training is a
type of training that is afforded to our VLC to
enhance their VLC skill sets and allow them
opportunities to interface with victim advocates
from both the civilian and military.

A significant number of our VLC attend
the National Crime Victim Law Institute's NCVLI
annual crime victim law conference.

Additionally, the Marine Corps sends
its VLCs to other training events such as the
annual End Violence Against Women International,
the EVAWI conference, which was recently held in
Washington, D.C.

Also, last fall, the Marine Corps was
invited to attend some great training which was
already mentioned by the Air Force SVC by the
Navy entitled Legal Assistance for Victims of
Sexual Offenses and Other Crimes Training
Symposium.

Additionally, during each 12-month
period, the four regional VLCs are required to
provide region-specific training for all VLC and
their paralegal staff in that region.
As most of our VLCs have at least six months of either trial or defense experience before being screened and selected for the program, our initial training objective is to identify incoming VLC as early as possible so they can attend the VLC/SVC certification courses that are sponsored either by the Judge Advocate General of the Army or the Air Force Judge Advocate General of the Air Force.

These are usually conducted in late spring or early summer. By doing so, we are able to orient our incoming VLCs to their new role as Victim Legal Advocate and increase their competency in navigating the Military Justice System from the perspective of the victim as they begin their tour as a VLC.

The Marine Corps annual training symposium brings together the entire VLCO team to include, VLCs, our paralegals and our Military legal specialists.

The objectives of this training event are to share and reinforce best practices
developed by all the Services, update on any new or emerging legal developments or requirements and provide instruction on specific issues or topics relevant to our practice.

For example, this year, the training included blocks of instruction on familiarization with the new USNCVLC manual, also working with the disability evaluation system and a half day workshop on the neurobiology of trauma and the legal system's response to sexual assault survivors which was conducted by Professor Meg Garvin and Dr. Wilson of NCVLI.

As I already mentioned, we have also found great value in sending our VLCs to an annual two-day training event sponsored by the NCVLI in Portland, Oregon.

We find that the NCVLI training provides an invaluable opportunity for our Marine VLCs to network among members of the civilian victim legal advocacy community and familiarize themselves with outside resources available to victims since a number of our victim clients will
still need some form of victim services to move forward with their lives once outside of the Marine Corps.

Last, each of our four RVLCs are required to conduct their own regional training, both formal and informal.

For the past couple of years, the regional training has been informal and more ad hoc. But, recently, in response to the maturation of the program, we have turned our focus towards standardizing the regional training while affording the RVLC some latitude in adjusting the training to suit regional demands.

For example, one region trained on the new circuit rules impacting the VLC practice in the courtroom.

RVLCs have also found benefit in conducting local roundtable discussions moderated by the VLC on recent articles or developments from both Military and civilian sources and publications as well as some recent court opinions.
In Okinawa, the RVLC often incorporates 30 minutes of training during the region's weekly conference calls.

I will now address changes that have been made to the Marine Corps VLCO training curricula since November of 2014.

Since November 2014, the Marine Corps VLCO training curricula has been refined but has not been altered significantly.

Our primary focus continues to be on developing and maintaining a high level of competence in victim legal representation advocacy within the Military Justice System.

In this regard, the Services and the program managers of each Service endeavor to work together to teach and train all of the SVCs and VLCS, whether it be at one of the certification courses sponsored by the Army or the Air Force or at the regional level.

This cross Service training is essential to producing quality victim advocates who are just as comfortable and competent...
advocating for their own victim within another Service as they are within their own.

We also recognize that a number of victims exercise their voice and opt out of participating in the court martial process which necessitates that our VLCs understand and can effectively navigate alternative administrative avenues that can otherwise hold the perpetrator accountable.

Additionally, as part of its refinement, the Marine Corps VLCO has begun training VLCs in the disability evaluation process and in appellate advocacy.

And, as our practice matures, we have been able to refine and better focus our training of professional responsibility issues and Military Justice overall.

I must note that the Navy-Marine Corps Appellate Division has been very inclusive with the VLCO in allowing us to participate in the development of their annual training and participation.
This is definitely a positive trend and I look forward to sending a number of our folks to the Joint Appellate Advocacy Training later this year in September.

I'll last address how these changes have addressed specific problems, challenges the SVCs and VLCs in the field have encountered.

The manning and staffing and evaluation of VLC training is the responsibility of the Marine VLCO Program Manager, which is myself.

To assist me with this effort, our GS-11 paralegal tracks the certification and training of our VLCs.

When a VLC or paralegal attends any form of training, they are asked to provide an after-action report on the topics covered, the quality of instruction and any general observations or comments.

We then use this information to decide whether the training will be included in the next year's offerings.
The fine tuning of the training our VLCs now receive has better equipped them to make a more comprehensive approach to victim advocacy that results in a more consistent, credible and effective approach to victim care and representation at courts-martial or the alternative venues.

Moreover, we have found that most problems and/or challenges the VLCs have encountered are best resolved when all parties involved have a common understanding of victims' rights, not just the VLC.

While I must defer to the Navy and Marine Corps Trial Judiciary to answer the question on the training of Military Judges, I can say confidently that I've seen a positive trend in the bench's enforcement of victims' right over the past year.

Madam Chair and distinguished Panel Members, thank you again for the opportunity to talk about the Marine Corps VLC program, specifically, our training efforts.
As our practice matures, I can assure you that our training will continue to evolve to reflect changes in the law and developments into victim legal advocacy.

Thank you for your time.

CHAIR HOLTZMAN: Thank you very much, Colonel.

Our next presenter will be Lieutenant Colonel Christopher Kennebeck, U.S. Army, Chair and Professor, Criminal Law Department.

Welcome, Colonel and look forward to your testimony.

LTC KENNEBECK: Good afternoon, Madam Chair and distinguished Panel. Thank you for inviting me to talk to you today about the Army Special Victim Counsel Training Program.

As you said, I'm the Chair and Professor. I have a faculty of nine associate professors and a civilian professor, a highly qualified expert who is an experienced prosecutor and exception advocate.

And, together, we're responsible for
developing the criminal law curriculum to train
our Judge Advocates. But, I am -- I manage the
execution of the SVC training here in the school
and I will speak to you in that capacity today
regarding our SVC training.

The training program is designed,
obviously, to educate and prepare our Judge
Advocates who have not previously represented
crime victims and it's a mandatory prerequisite
before certification.

We have two adult certification
courses and one child certification course
annually. And then, of course, we send Judge
Advocates to the Air Force certification course.
Thank you, Air Force.

One of my faculty is going next week,
so we appreciate that.

Also, the adult SVC certification
course is four and a half days. It's 22 hours of
lectures, four and a half hours of panel
discussion and six hours of small group sessions.

Obviously, it's substantive,
procedural law as well as practical exercises,
subject matter experts to address victim
behavior, medical issues and sexual assault cases
interviewing techniques, resiliency.

We also invite guest speakers who are
stakeholders in the process. And, we think we,
you know, benefit a lot from including them,
including representatives from the SAPRO program,
defense counsel, special victim prosecutors,
Staff Judge Advocates, Military Judges,
practicing SVCs and investigators from CID.

The SVCs from the field facilitate
dialogue in small groups. They participate in
panel discussions and they provide context and
concrete examples with anecdotes which provides
definitely some, you know, helpful information
for those SVCs who are the student SVCs.

And, overall, this interaction
improves the student SVC's ability to
communicate, negotiate and advocate to protect
their clients' interests.

And, it supports a multi-disciplinary
approach to victim care overall.

As for the child course, it's a four-
day course devoted exclusively to educating SVCs
on the nuances on dealing with child clients and
their guardians.

We offer this course independently
from the SVC certification course. As you heard,
the Air Force mentioned, we generally, we want to
have a break between because we think there's a
benefit in allowing a counsel to represent an
adult and understand the role of being an
advocate for a victim before we bring them back
to teach them the child nuances.

But, once again, that's something that
we continuously look at. We might make the child
course part of the adult course in the future.
So, we will continue to review that decision.

We include, obviously, subject matter
experts in the area of competency, child
psychology, familial dynamics and incorporate
panel discussions and experts in this child
course as well and in with the practical exercise
where we have a mock interview with a child, a role-playing child, at the end of the course.

And, much like the services you've heard from so far, we have regional specific training for Special Victim Counsel, a great deal of online collaboration.

I'd say the SVC community is much like the defense community. They share writs. They share motions. They share experiences whether it's online, face to face or just over the telephone. They're a very tightknit community.

We take advantage of cross Service training as well and all of our shore courses are now open to SVCs which just helps, especially in the advocacy realm to have actual SVCs in the room to play those parts when you have a mock 412 motion or a mock 513 motion which now, we incorporate and I'll talk more about that in a minute.

So, since November 2014, we have made several changes in addition to that curriculum.

First, we created a standalone SVC
Second, we added more stakeholders to the adult certification course, specifically, defense counsel and SVP primarily to address more effective and efficient means of communication between and among the parties. But, sometimes their interests diverge most times with defense, but sometimes with the Government as well.

Third, we added a block of instruction and a workshop on writ and appellant practice as we see that remedy being exercised more often over time.

And, fourth, we've added more in depth training on retaliation and CID interviewing techniques.

To further improve communication interaction, we invited SVCs to attend our two-week advocacy course taught here at the school, the ITAC, Intermediate Trial Advocacy Course.

It provides an excellent opportunity -- it was targeted for prosecution and defense attorneys in their first year of practice, but
now it gets those folks together in the rooms to talk about their different interests.

And then, of course, they role-play it out in all the advocacy exercises, too. So, we have a sex assault hypothetical that we use and we try that case from beginning to end, from opening statements to closing.

And, we argue 412 and 513 motions with those students in the room.

The most significant change implemented since 2014 is the purposeful injection of the SVC content into all of our courses here at the JAG School, the basic course, the graduate course, ITAC, the Military Justice Managers course and the Military Judge course as well as our courses for Commanders and SOLO and GOLO.

We use the sex assault fact pattern as a teaching tool in all of these courses, particularly the Judge Advocate courses and the fact pattern includes an SVC, it includes medical records, it includes an embedded 412 issue which
allows for very complex motion practice in the advocacy courses.

Moving forward, we're adding the following subjects to our next certification course, you've heard this as well, labor law experts to address how to handle DoD civilians and their unique concerns, VA benefits experts, MEB/PEB counsel for Soldiers facing medical discharge.

And, borrowing from the Air Force, we are probably going to add a class on reading medical reports, excellent idea, more in depth instruction on the SVCs role in clemency, parole and restitution.

The SVC Program Manager's Office actually owns this course so, you know, that's Colonel Marotta, you've heard her testify before, Mark Meixell and their staff. They help manage and evaluate this program and the course curriculum while my department manages and staffs the execution of the training.

So, back in November 2014, Major
Marcus Misinec, one of my faculty, you know, built this course with the Program Manager at the time and has, you know, developed those courses from the infancy, the child and the adult course.

Since that time, we've added Ms. Patty Sudendorf, my highly qualified expert. She was hired in February of 2015 and is here in the room with us.

Many years of prosecution experience taught at the NAC, so brings a wealth of expertise to us.

And, Major Misinec will move on and Major Kristen Frischionne will take his place and be the Program Manager for this course here in the school. She's the one attending the Air Force JAG School next week.

Together with the SVC Program Manager's Office, our department continuously reviews curriculum. We evaluate and engage subject matter experts for more input on how to improve this curriculum, especially civilian experts.
We share information with sister Services and victims' rights entities to ensure we capture best practices.

Much like the Air Force, after the, you know, our courses here in the school, we have a survey which is, you know, required to be filled out by all students.

And then, we don't quite formally ping them six months later, but I like that idea, another thing I might steal, but we do get feedback after the fact to continue to improve and develop the SVC courses.

Finally, with regard to the Military Judge course, since 2014, SVC-related content has been injected purposefully to include motion practice, 412 and 513 exercise, evidence of privilege, professional responsibility and sentencing.

So, although we have one dedicated hour on SVC, we actually inject that into many aspects of the course and as I said, the fact pattern.
So, the student judges must consider a written motion filed by an SVC. They have to preside over a mock hearing with the SVC present, have all those arguments about standing, when they speak, how they speak, listen to the SVC make their arguments and then they have to make findings of fact and conclusions of law at the end of that mock hearing.

And, of course, we keep them updated with SVC representation issues and, of course, recent case like, like the Duckworth opinion.

So, I believe my comments address the four questions you asked us today and I'd be happy to answer any more if you have them afterwards.

Thank you.

CHAIR HOLTZMAN: Thank you very much, Colonel.

Our final presenter will be Ms. Charlotte Cluverius, did I pronounce that correctly?

MS. CLUVERIUS: You did, ma'am, thank
you.

CHAIR HOLTZMAN: Thank you.

U.S. Navy Deputy Chief of Staff, Victims' Legal Counsel Program.

Welcome before the Panel, we are eager to hear your testimony.

MS. CLUVERIUS: Good afternoon, Madam Chair, distinguished Members of the Panel, thank you for the opportunity to provide comments today on behalf of the Navy Victims' Legal Counsel Program.

Before I address my prepared remarks about training, I wanted to go back and answer a question, that I believe the Admiral asked earlier before lunch about whether or not SVC or VLC are getting off track in their careers with regard to Military Justice.

And, I can speak for the Navy, obviously. We have a Military Justice Litigation track which Commander Reyes discussed, the MJLQ. And, we have two VLC who are currently MJLQ certified and there are several layers within
that program and they have to apply to move up.

And, in order to apply and

successfully move up, the Board wants to see that

they've had enough litigation, Military Justice

litigation, experience. And, we had one of our

VLC move up a level while she was with us and

she's also about to transfer to a senior trial

counsel job.

So, we feel like that's not being a

VLC in the Navy, is not being held against or

holding anyone back from the Military Justice

litigation career.

As background to the training of our

VLCs, I wanted to share a bit about our VLC

selection process, since that informs our

training.

Our VLC candidates are all volunteers

to the program except for three in the initial

wave when the program was initially stood up.

Otherwise, now, the program is entirely

volunteer-based if we can do it that way. And,

so far, we've been successful.
They are interviewed by the Chief of Staff for the Navy Victims' Legal Counsel Program then by a Commander Navy Legal Service Command and, ultimately, the Judge Advocate General of the Navy.

In addition to being screened for maturity, judgment and demeanor, VLC candidates are specifically vetted for Military Justice litigation experience. Or, in the case of our Reservists who are taking active duty orders to the VLC, civilian criminal litigation experience.

So, they arrive at our program already fairly experienced on the trial counsel side or the defense counsel side or both in many cases. And so, this would include that they've attended the basic law course at NJS as well as the Advanced Trial Advocacy for Defense Counsel and/or Trial Counsel before we see them. So, they have all of that background.

And, with regard to the basic law course at the Naval Justice School, though we are not what you would call a first line customer of
that course because we do not take any attorneys
that are not beyond their second tour.

We have been asked by the Naval
Justice School and included in their review of
their training objectives. So, we've been
allowed to provide input from the VLC perspective
and we're grateful for that opportunity.

Specific VLC training requirements
start with, as you've heard from all my
counterparts here, a VLC or an SVC certification
course. That is required in order for our VLC to
be able to represent and advise clients.

Due to our smaller Service and
staggered and longer rotation cycle, the Navy has
only conducted one VLC certification course at
the Naval Justice School and that was in January
2014, at the start of the program, when we had a
large number of VLC reporting at one time.

Since then, we have required our
incoming VLC to attend an SVC certification
training course either here with the Army or at
the Air Force JAG School, thank you both very
much.

And, for example, we have five incoming VLC attending the Air Force SVC certification course that starts on Monday and we have four others attending the Army certification course here starting in August.

These certification courses are, obviously, staffed through the respective Service schoolhouses; however, the Navy VLC program routinely provides one to two instructors, depending on what the schoolhouse requires to join the school staff in support of the course.

For the upcoming Air Force SVC certification course, for example, we're providing two of our more seasoned instructors in appellate and motions practice, as well as the representation of child victims at the request of Colonel Stout.

The certification courses are evaluated through critiques on the attendee level, as you have heard, as well as through open dialogue at the VLC Service -- or SVC Program
Manager level.

Every month or six weeks, the SVC/VLC Program Managers meet to include the Army, the Air Force, Navy, Marine Corps, Coast Guard and the National Guard to discuss any emerging issues.

And, this frequently includes emerging and changing areas in training.

And, any changes in the curricula at the SVC certification courses are shared amongst the Services for input and recommendation for which we are so grateful to participate.

All Navy VLC are required to attend training on the representation of child victims offered by both the Army and the Air Force JAG Schools.

Within our own program, we conduct required monthly training via -- since we're spread out all over the world, we do this live online via VTC or DCS.

Last year's topics included discovery, Article 32 practice, appellate case law updates,
mental health records and the expert witness, retaliation and social ostracism, protecting client privacy, working with minor victims and vicarious trauma.

Our notable additions to monthly training since November 2014 include retaliation and social ostracism which was being seen in the field and that is an annual update and training item for the Navy VLC as well as the larger courses that we attend.

As our VLC are often in their billets for more than two years, we're concerned about empathy fatigue, also known as vicarious trauma. In response, we've instituted mandatory annual training on this topic and conducted this training internally as part of our monthly training requirement, as well as having a mental health professional conduct this training at our recent VLC symposium which I'll talk a little bit more a second.

As case law has developed since November 2014, particularly related to the
motions practice under Military Rules of Evidence 412, 513 and 514, we've increased our case law updates and motion practice training within our program, obviously, to match that.

This training is part of our regular monthly curriculum and we've provided it at our symposium as well as via our online SharePoint site as relevant cases and decisions occur.

VLC representation and eligibility was extended to minor victims in June 2014, as you know. Since that time, we've continued to develop more sophisticated internal training in that area as well as requiring our VLC to attend the formal child victim trainings required by the Army and the Air Force.

Our required monthly training is conducted by senior VLC or occasionally by an outside Military or civilian experts, as appropriate.

VLC leadership, including myself, attend and all program members evaluate the training for future changes and updates. So,
it's a constant evolving program.

This April, we conducted our first ever VLC program training symposium where we gathered 24 out of 29 VLC and eight of ten yeomen who comprise our support staff for VLC-specific training which included social media and retaliation, motions practice and appellate issues.

We brought in outside resources to provide the Military Judges' perspective and the Staff Judge Advocate perspective, as well as leadership and vicarious trauma training.

Sessions on career development were also provided for both the officers and the enlisted staff.

The symposium training was conducted by a mixture of internal VLC experts as well as external presenters including a leadership expert from the Naval Academy staff, a vicarious trauma expert from the Naval Mental Health staff and a civilian professor who specializes in the subject of social media and the victims.
Attendees completed critiques of the training symposium and we found the comments to be overwhelmingly positive. A detailed after-action report has been produced and it, along with all of the original critiques will be filed for use and planning and improving the next training symposium.

Our hope is that we will be able to conduct this at least biannually, if not annually.

In March 2016, our designated appellate team currently comprised of four Navy VLC and one Marine Corps VLC came to Washington, D.C. to attend VLC-specific appellate training conducted, in part, by the Navy's Appellate Government Division known as Code 46 over the course of three days.

Their training included motions practice instruction, appellate writing, attending a CAAF argument and being admitted to the Navy-Marine Corps Court of Criminal Appeals.

With the maturation of the motions
practice where victims' interests and privacy rights are in play, we're focusing on the appellate issues that can arise both at the trial stage as well as in post-trial processes.

In response, we've assembled this VLC appellate team not only to support VLC with trial writs as they arise and post-trial appellate cases that arise, but also as a sounding board and training resource for the entire VLC on all appellant matters.

In addition to this required training, we support the following additional training.

As previously mentioned, we participated robustly in a joint regional European training that was cross Service held in Ramstein in September. Overwhelmingly a positive experience and it's already being planned to be repeated in September.

It resulted in a shared website intra-service that's still being used today and will continue to be used for the -- a resources sharing venue.
Each year in June, a group of Navy VLC, usually the most recently reported, are sent to the National Crime Victim Law Institute, NCVLI, in Portland.

Or, again, this June, we have four new VLC attending.

In the future our program will also be sending several VLC actually to attend the EVAWI, End Violence Against Women International conference.

Captain Fischer-Anderson attended and presented it at this part year's conference in Washington, D.C.

In August 2015, we sent more than a third to the legal assistance for victims' training sponsored by the Navy Legal Assistance Division known at Code 16 in Orlando, Florida.

As you'd already heard, this was interdisciplinary as well as inter-Service, so it covered disability evaluation attorneys, legal assistance attorneys and VLCA and SVC. Over 200 attorneys attended at that was a very, very
productive training to strengthen the team
approach to representing and serving victims.

That four-and-a-half day training was
conducted by Military and civilian presenters
from all three of the disciplines and across the
Services as well.

In 2015, we sent several VLC to the
prosecuting Special Victims' course at the Naval
Justice School in Newport, Rhode Island as well
as several VLC to the courtroom communication
course put on by Joshua, which is a trial
advocacy training.

We rely heavily on our VLC internally
to identify deficiencies in existing training and
bourgeoning areas of practice as well as to
suggest local or national training events
relevant to our practice.

We're open to other stakeholders'
recommendations as well, with regard to
appropriate training opportunities for VLC such
as from Staff Judge Advocates, Military Judges
and the Naval Criminal Investigative Service.
We're lucky in that we control our own travel and training budget within the Navy VLC program, so we're able to send VLC to relevant and required training without having to rely on externally funded seats at desired training courses.

And so far, we have not had to say no to anybody for a relevant training opportunity.

Finally, with regard to changes made to the training of Navy and Marine Corps Military Judges since November 2014, like my colleagues here, I cannot speak with authority from the VLC perspective, except I can share what our Chief Judge of the Navy-Marine Corps Court of Criminal Appeals has authorized me to share with you, which is that all new Judges are trained at the Military Judges course hosted every year by the Army here at the JAG School.

The curriculum includes a block of instruction from an Army SVC representative who discusses the SVC program in general, parameters of the practice and representation, their
training and their role both pretrial and during trial.

During the Joint Military Judges Annual Training for sitting Judges held every February, this past year an Air Force SVC presented on the same topics covered at the Military Judges course.

At every Joint Military Judges Annual Training since 2014, SVC/VLC training has been conducted.

In August 2015, the Navy-Marine Corps Trial Judiciary held Special Victims' training for their Judges where the Navy and Marine Corps VLC Program Managers address the judiciary discussing their respective programs, their concerns, the parameters of VLC practice and the evolving issues such as appellate representation.

That concludes my comments. Thank you, again, for the opportunity to address you. I look forward to answering any questions.

CHAIR HOLTZMAN: Thank you very much.

Judge Jones?
HON JONES: So, earlier today, we heard, and it's true, that the positions of the VLC or SVC are usually aligned with those of the prosecutor but can be different.

And, I was wondering if you had any information, even anecdotal or any data at all on like the number of times when there was a diversion or just disagreement between the victims' counsel and the prosecutor? And, what kind of training do you give then?

I'll take a volunteer.

COL DECAMARA: You're looking at me, Judge Jones.

HON JONES: I'm sorry, what?

COL DECAMARA: I said you're looking at me, so I guess I'll go.

HON JONES: I'm not really, I can't see a thing, don't worry about it.

Maybe it doesn't happen that frequently or you don't know yet. I'm just curious.

COL DECAMARA: Well, so, for us, I
require my counsel to provide an after-action report after every Article 32 and every court martial.

And, it includes in there what motions are filed, if they were included, if they were provided the written documents, if they were heard on the issue.

And, I would say generally speaking, we are seeing that there -- as the practice develops, more coordination, once we are at the trial stage with the senior trial counsel, I think we're getting better. We're not perfect at it yet.

I think one of the areas that is right for development without the SVC becoming the Government, and I think our counsel are very concerned about that, that they are not an arm of the Government, they are not there to be the Government, but to understand the strategic perspective of the trial counsel so they can better inform their clients to make a decision with regards to maybe it's a cell phone record.
And so, for instance, we just had a case at a northeastern base and the issue was the mental health records of the victim. And, because of the understanding that SVC had from the STC, the senior trial counsel, as to the their theory and theme, instead of the SVC filing a 513 motion, the victim did waive the 513 issue to try and help with what that theme and theory was because the victim felt like maybe it was a battle that she could win, but it might help win the war, if you will, by giving that waiver.

And so, I don't think we're perfect at it yet, I think there's definitely areas. I would say, actually, those disagreements or diverging of where people want to go probably happen prior to the court, and where that is, is in alternate dispositions not in --

Once we are at the court and we are litigating, I think they are probably more aligned, but it is whether or not I want to continue on with this prosecution? Do I want to support either a PTA or an alternative
disposition such as we call them Chapter 4s in the Air Force, a discharge in lieu of court-martial.

And so, I think that's probably where you're seeing because, generally speaking, the prosecutor wants to go forward and prosecute the case. The victim might have some alternate dispositions that they would like to see.

So, I think we're getting better. I think it's an area to work on, but I think we're definitely getting better at it.

CHAIR HOLTZMAN: And is it possible that 412 issues are aired during this process and before you get to trial, and maybe that's --

COL. deCAMARA: I think where --

CHAIR HOLTZMAN: -- part of the equation?

COL. deCAMARA: I think it is. I think where we're actually seeing -- even though the Article 32s are becoming -- everyone at first -- now it's paper cases. We're still seeing that STCs are earning their money at those 32s. My
philosophy for my counsel is that I want my
counsel to go to the 32 regardless of whether or
not their client is testifying because we're
seeing that maybe a lack of understanding or not
necessarily combing through the information with
that type of eye by the early stages of the
prosecution.

And so, we're seeing where we are
making objections. And that's where the
disagreements are happening is at the 32 where
they're putting in information. Like wait a
second, this is some 412 information that we
don't want the FO to hear or the victim doesn't
want this, this is not appropriate.

And so that's where we're seeing --
and I wouldn't necessarily say there are
disagreements. I think it's just maybe a lack of
recognition because there's not their processing
yet. And so, I do -- I think that's where those
type of issues are coming to light earlier.

CHAIR HOLTZMAN: I just have one more
question --
COL. deCAMARA: Yes, ma'am.

CHAIR HOLTZMAN: -- about writs unless someone else has any other additional experience.

COL. McDONALD: All I would say is, Your Honor, is I agree. Colonel McDonald. We make it very clear and my VLC make it very clear with trial counsel that we're not there to help you perfect your case. We're not here to persuade our victim to do something that our victim is not in a position to do or does not desire to do.

And I think again over the past couple years as this practice has developed I think there is a much better understanding of what the VLC role is independent of the trial counsel. And you see that maturation of the trial counsel as well. And I think you agree with that. And I also agree with everything else that Colonel deCamara said.

CHAIR HOLTZMAN: So I have no knowledge of this. I gather there have been some writs and -- or maybe a writ or two. Can anyone
fill me in on that?

COL. deCAMARA: Yes, ma'am. So we just had a writ appeal that was in a Marine Corps case that was appealed to the Navy-Marine Corps Court of Criminal Appeals. It was a 513 issue, and in that 513 issue was whether or not the military judge properly applied 513 and whether or not he allowed the victim to have notice and the right to be heard on what the exception was that the defense was asking for.

And so, that was appealed to the Navy-Marine Corps court. That was -- the appeal was denied. The victim -- our counsel, again it was a Navy-Marine Corps case. Air Force counsel was -- appealed to CAAF. CAAF heard oral arguments this past Wednesday. And that decision is pending.

However, I think the main issue was not the 513 substantive issue. Rather, it is fallen on whether or not CAAF has jurisdiction over it from how the language of 6(b) is written with regards to how that writ appeal can be taken. And that
it says specifically the CCA and is silent on

CAAF.

CHAIR HOLTZMAN: All right.

COL. deCAMARA: So that's our current

writ appeal. Right now we've had others that our

clients have not -- have decided not to take.

The area that we have concern about is not

unnecessarily taking the writ appeals, but it's

on what writ appeals are not available

necessarily under 6(b), such as a spousal

privilege. And an adverse ruling in a spousal

privilege is not explicitly specified on the writ

appeal, so that to-be-determined if someone

wanted to appeal that, if that would even have --

CHAIR HOLTZMAN: Right.

COL. deCAMARA: But we have not had

that happen yet.

CHAIR HOLTZMAN: Do you mind one more

question?

So are your lawyers typically getting

up and representing the victims' position,

whether it's -- I'm assuming even if it is
aligned with the Government's, when are they
writing? Do you have enough experience yet
there? Do they only write if the Government's
not on their side, or how is that working out?

COL. deCAMARA: Generally speaking, I
think for our cases our counsel are prepared --
they're preparing their motions ahead of time,
and then if the Government has the same line of
rationale, they may or may not submit. But
generally speaking, they will --

CHAIR HOLTZMAN: They're ready?

COL. deCAMARA: -- submit at least a
motion in writing. It might be that the military
judge under the limits of LRM v. Kastenberg might
say your position is aligned with the Government.
You don't need to be heard on this. But
generally speaking, I would say from the after
action reports from our cases that they are
writing and requesting to be heard on most of
them.

CHAIR HOLTZMAN: Thank you.

COL. deCAMARA: Yes.
COL. McDONALD: That's the same for my claim.

LTC KENNEBECK: And the same here, ma'am. I was a deputy secretary again last year.

For two years we tried almost 200 cases, and of those cases about half were sex assault cases. I had three special victim counsel who worked for me and they wrote three writs in that period of time, one of the first three. And they're all generally 513-related and how the judge handled the 513 motion.

So first of all, we pick the best qualified to be SVCs. And from the leadership perspective we had their interests and their back. They could raise their concerns to us and they filed those writs with support from the special victims' counsel program manager and assistance from GAD or DAD practitioners to help them with the writ practice, which has become robust now.

CHAIR HOLTZMAN: And what was the results on those writs?
LTC KENNEBECK: Well, Duckworth is one of them and --

CHAIR HOLTZMAN: Oh.

LTC KENNEBECK: -- that was definitely a wake-up call for how we handled -- how we should be handling 513. Now of course, that's going to continue to -- we'll see what CAAF has to say. Or, no, CAAF did speak on that one.

COL. McDONALD: Not yet.

LTC KENNEBECK: Yes, that's right. They're going to rule shortly. So I think we will see a trend over time where CAAF and the Service Corps start to make clear what is expected of judges at 513 hearings.

CHAIR HOLTZMAN: But have you -- and you go to the Service Corps now. And have you won one there, or how many writs have been taken up? The one you've been talking about.

COL. deCAMARA: We have that one and then we also supported an amicus on Duckworth. I think DD v. Lippert. And then I think the Army had a second one that they were successful on on
a 513 that was -- that preceded Duckworth. Those
are the --

LTC KENNEBECK: We have had success at
least once. I don't know that I'm ready to break
down how --

CHAIR HOLTZMAN: You don't have a
sample?

LTC KENNEBECK: I can get back to you
on that.

CHAIR HOLTZMAN: I understand, yes.
Thank you.

Admiral Tracey?

VADM. TRACEY: Colonel McDonald, would
you just refresh me, what are the minimum
experience requirements for a VLC?

COL. MCDONALD: A VLC should have at
least; and most of them do with the exception of
one, six months of trial, of litigation
experience, whether it was with the prosecution
or the defense. Other requirements are they need
to show a requisite level of maturity, composure,
all of those attributes that we would look for
leadership. Also the desire to be a VLC is not inconsequential.

So those are really the main criteria.

That and then we put them through a check of sorts, both for the disciplinary and so and so forth. But as far as experience level, a successful, albeit maybe a short tour, or a longer tour, but at least six months of trial experience.

VADM. TRACEY: What roles do you all have, Colonel Kennebeck, you indicated that you do have an opportunity to participate in the training of military judges with regard to SVCs. What roles do you have with regard to shaping the training for commanders, general court martial convening authorities, the line officers in this process?

LTC KENNEBECK: So here at the school we have our senior officer legal orientation course, a one-week course with battalion and brigade commanders. That's the lieutenant colonels and colonels who command 600 to 10,000
or 5,000 Service members. Those -- that week-long course has SVC content injected and I get to control what crim law or legal assistance-oriented that touches crim law is injected in that course, along with our administrative law chair in this school. So we have a decent amount of autonomy in shaping the curriculum.

For military judges that's pretty much my course. And the senior judges own that course. Once again, I get to execute their intent, but together we collaborate. And once again, we have great autonomy in shaping that curriculum.

VADM. TRACEY: Others?

COL. McDONALD: Ma'am, I found my regional VLCs have -- through their outreach program, will provide training to the local commanders. However, VLC, although we contribute to the development of the commanders' conference for those that are at the higher level, we don't directly participate in that training as of yet.

VADM. TRACEY: But you do have an
opportunity to make input to --

(Simultaneous speaking.)

COL. McDONALD: We certainly do, ma'am.

COL. deCAMARA: The Air Force began last year, in the spring of '15, a senior officer legal orientation similar to the Army's course. I brief at that. I have an hour block at that as well. The first day is all military justice. Last year it focused solely on a sexual assault case and followed it basically from start to finish with vignettes through it.

And this year it is a domestic, so not sexual, but still a victim who is in there. So they're getting information about transitional compensation and victims' advocacy. And I have a block in that as well where we get to speak. And those are the SVC MCAs and then their vice-commanders and the group commanders. So it is at that senior level as well.

MS. CLUVERIUS: And for the Navy the -- we're very similar to the Marine Corps. Our
commanders, our COs are trained on obviously the 
sexual assault program, and part of that is going 
to be the role of the VLC. In addition to that, 
we participate in the training, the advanced SJA, 
staff judge advocate training, who are the main 
advisors to the commanders.

And on a more personal level the chief 
of staff, Captain Fischer-Anderson and I, try to 
visit every location where we have VLCs 
operating. And during those visits we meet with 
all available COs personally, and that happens 
just about every year. One of us gets to every 
single base where we have a VLC and we're able to 
meet with multiple COs and commodores in that 
vein. So we're able to find out.

And overwhelmingly, especially this 
last year, we found that the commanding officers 
are very well-versed in the role of the VLC and 
usually have a very good working relationship 
with our local VLCs. So I'm sure we're not 
getting to everybody, but we are able to test it 
that way.
COL. McDONALD: And, ma'am, likewise with the Marine Corps during my site visits when the opportunity affords itself, I do go and see all of the commanders. And it's great to have that one on one discussion with them.

VADM. TRACEY: Thank you.

MR. STONE: Yes, I represent victims in a civilian practice and one of the things that comes up in virtually every case after a conviction is going to be me helping them articulate what they want to say at a parole hearing and sometimes when there's a clemency application posted. It's not will it happen. It does happen. It's very common.

And I noticed in the comments about the Army program that you do exercises, these mock exercises, and I wondered if you do a mock exercise on what a victim can do and might do in a parole and in a clemency situation so they understand what the questions are that those boards ask.

So they respond to -- some of them
only want to know how is the person now. Some of them want to know a whole history. Some of them say I don't even get the original file. I don't even know anything except a recommendation about the guy's behavior in prison. I mean, do you or have you thought about adding that, if you know?

LTC KENNEBECK: So we definitely have a block of instruction on the post-trial and the clemency submission that goes to the commander before final action is taken. And there's a formalized process for that for when the victim can inject comments and how that is handled and what happens then.

And then we invite a guest speaker from our parole board to talk about the parole process and how victims can provide input to that parole board. And so we educate our SVCs on that process as well. Obviously that can take much longer and sometimes a victim will have to exercise some patience until the parole board is interested in input and is ready for input.

And sometimes that means you'll have
a change in victim counsel. But that is a
reality that we deal with and we -- a victim who
needs assistance in the parole process will have
eligibility to see a lawyer and they are trained
in how to plug into that process.

MR. STONE: Have you thought about an
exercise though? Because I took the course
here --

LTC KENNEBECK: Oh, I see.

MR. STONE: -- and I heard some of
those speakers --

LTC KENNEBECK: Yes.

MR. STONE: -- but it didn't leave me
knowing it should be a one-page typically that
they're looking for, or two pages.

LTC KENNEBECK: Right.

MR. STONE: There's a form, there
isn't a form, where it goes. I just wondered if
you have an exercise that nails it down so they
have a sample.

LTC KENNEBECK: Not at this time, but
I will consider.
MR. STONE: Great. Okay. The second question that arises out of some of the comments is; particularly this goes to I think the Marine Corps because you have some short rotations, are we losing to rotations or even to this school some of the best educated now SVCs, because it's not like we have a long history of them in this -- they're all brand new and now your best ones -- are we stripping of the experienced people and you're getting people who've never -- generally had the experience that they need to see the SVC experience?

I was greeted here by someone who was a wonderful SVC and he's now going to be -- I mean, he's here for a while, meaning the school, and he's no longer going to be in the SVC Corps. And I sort of feel bad because I know he did a great job on victims.

I just wonder if the rotation speed and promoting them to supervisory and training slots is a problem.

COL. McDONALD: Well, ideally, sir, I
can speak for the Marine Corps is we were very fortunate that we had two of our four regional victims, legal counsel, be selected to attend this fall's Army school, the one-year TJAGLCSJ graduate program. And we also have another one, Will Ivans, who you all may know. He's testified before, you all know. Though he's not going to school, he actually was selected for one of our coveted major SJA billets at New River.

So, I mean, he's been recognized for his VLC accomplishment, but also he is just one of those just really rock solid Marines that I think is going to really carry on the tradition. He's going to be one of the first SJAs to have been a VLC, which I think is a real, real plus for the program overall.

We try to select the best, and when you select the best, you do run the risk that they're going to be taken from you sooner. That's a risk I'm willing to take, but I will say; and I will compliment all of the eligible
SOICs from which we get our VLCs, who also detail and staff the defense as well as the prosecution, that when everybody is -- when you have good people working in all of those billets, you choose your best. The system does tend to work better.

And I've been very fortunate to have really the cream of the crop. And I think this next year will really prove that. The next group coming in may not have had that VLC experience per se, but they certainly have all those attributes that are going to set them self and the program for success.

COL. deCAMARA: Back to the question from earlier about how are people doing? First of all, I'd like to say our promotion results just came out this past Tuesday, and for the -- we had one major who was in the zone for lieutenant colonel. She made it. And of the sitting SVCs, of which I had seven, and six former SVC, full-time SVCs, all 13 were promoted. So we had a 100 percent promotion rate, which is
phenomenal.

I think there is good and bad in what you're talking about, and I'm going to take the good of our folks after doing about two years going onto something else, because number one, they're going to be disciples for the program. And I think we need disciples out there to educate both commanders who are coming in about the program, as well as growing those young new counsel coming into legal offices into how to be SVCs and what the program is and to think from outside of just a prosecution or defense mind set. And then I look forward to trying to put the hooks in to pull them back to be senior SVCs and come back to be the major to then be that mentor to the new SVCs coming in.

So I think while the immediate loss of having that experience and that knowledge is -- but it's a cycle of life that we have to bring new people in to get that discipline and to get that experience. And then I'm going to do everything I can to bring those best and
brightest back to be senior SVCs or deputy
program managers or eventually have someone grow
into be the program director.

LTC KENNEBECK: I would echo those
comments. I think that they go away, they
develop, they come back, and they come back in a
leadership or a management role. And meanwhile
they're disciples along the way. I totally agree
with that.

And I also believe this has become a
more coveted job, I think. I can say that from
the grass roots. What was initially maybe a
concern has become, oh, this is an opportunity to
maybe get back in court. This is an opportunity
to really fight for something that I can believe
in. And I see that in captains.

So I think it's a more popular job and
I think it's not hurting careers. And I think
you're going to see them come back as more
developed leaders down the road and provide more
to the system. So I think that's a natural part
of how we practice, and I think it works.
MR. STONE: Is it true in the Navy, too?

MS. CLUVERIUS: Yes, sir. We I think have the dubious honor of having the longest orders, with a few exceptions. We have three-year orders for our VLC. And we actually -- within the program we have some concerns about that with regard to empathy fatigue. It's a tough job to do full time for that long, so we watch that very carefully and we've been discussing whether or not the orders should be shortened.

But we also like to grow experts. We would like them to get good at what they're doing and do it and do it for a long time. And as a result we've had some great promotion results and we've had -- we also -- it's become a very popular program and we're seeing a lot of -- during this upcoming billeting cycle we're seeing a lot of folks raising their hand, both in the Reserves as well as on the active duty side to come on active duty and do that.
MR. STONE: My last question, because we asked it of the other panels; and I presume from everything we know, because we've gotten lots of information, that none of your services have any highly-qualified experts that are retained like civilian experts who stayed there forever because they don't have to rotate, or independent investigators. If I'm wrong, please correct me.

COL. McDONALD: The Marine Corps does not have any highly-qualified experts specifically for their VLC program.

MR. STONE: Or independent investigators?

COL. McDONALD: Or independent investigators.

MR. STONE: Okay.

COL. deCAMARA: We don't have an independent investigator. I would consider our associate chief a highly-qualified expert. We don't have that tag name for it, but --

MR. STONE: Can he rotate?
COL. deCAMARA: -- she came in --

MR. STONE: Can she rotate? The point about highly-qualified expert --

COL. deCAMARA: No.

MR. STONE: -- is they don't have to rotate.

COL. deCAMARA: No, she's -- it's a GS-14 position at the headquarters as the associate chief, so it's not a rotating position.

MR. STONE: Yes.

LTC KENNEBECK: We have a highly-qualified expert. She's an integral part of the SVC curriculum here at the school. We do not have investigators.

MS. CLUVERIUS: I can't rotate without significant effort and finding another job, but I wouldn't necessarily at this point.

(Laughter.)

MS. CLUVERIUS: So technically I would be that corporate knowledge and that part of the leadership, but my role is not necessarily as the expert in the courtroom. I've never been a VLC.
MR. STONE: Yes. Okay.

MS. CLUVERIUS: Although I feel like I'm getting there in terms of what I've been observing with our VLC, but we don't have what you would term as a highly-qualified expert as part of the Navy VLC program.

MR. STONE: Or investigators?

MS. CLUVERIUS: No investigators, no, sir.

MR. STONE: Thank you.

CHAIR HOLTZMAN: A couple of questions, a couple of areas. First, on sharing information and best practices on the Marine services. I mean, I'm gathering from just in between the lines that there's a lot of sharing and a lot of comradery and cooperation. Is that true? Can it be improved? What's your --

(Simultaneous speaking.)

COL. McDONALD: Absolutely, ma'am, and particularly the Marine Corps doesn't have a program, so we really again, thankfully with the -- to the Air Force and the Army and the Navy.
And the Marine Corps puts on -- sometimes in regional training we're able to maybe give something back a little bit. Maybe not on the same scale, but I can say almost daily, if not weekly, we're all talking.

And it may just be, hey, I've got a set of facts here, or is this the type of -- we have a victim that's presenting a certain way that may or may not be eligible for legal assistance, but here's the fact scenario. Let's kind of dive into what the intent is of the program. And we talk about just using that as an example, but routinely or whether it's something with the appellate practice. And we get on the phone with each other once a month where we'll on a conference call and talking about those issues or best practices, or trends routinely.

Routinely, ma'am.

COL. deCAMARA: I think the other thing is, I mentioned; and your staff member will be able to see it, a campus web site that is being -- that's created for this next Air Force
SVC certification course. And on it it has already not only all the lectures and the PowerPoints, but every service there is all of their source documents.

So the Army JAG man that you heard and then all of the instructions that they rely upon, the section with the Marine Corps and everything, which I think is very important considering again the CAAF argument that you saw. It's an Air Force member in a Marine Corps court. And so, we -- that's one things that's been surprising to me is actually how many cross-service cases we actually do have. And I do think it is OCONUS more so than CONUS where we're seeing that.

(Off microphone comment.)

COL. deCAMARA: Because the Air -- it's an Air Force of a Marine accused. And so we're seeing that kind of cross-service.

PARTICIPANT: I see.

COL. deCAMARA: And so, having that web site there to be able to access those documents I think is going to be exceptional.
And then at some our courses the ISLC courses, for instance, we've had Coast Guard, National Guard and Navy who've come, I think, to all of those ISLC courses. And so, they're meeting each other. They are talking to each other, not only at our level, but I believe it's fostered at the SVC VLC level.

For instance, in the National Capital Region I know those SVC VLCs in the National Capital Region hold a quarterly luncheon where they all get together and talk about what they're seeing.

And so, I haven't -- I've been in a semi-joint-type environment, but from my experience I -- the collaboration that I have seen among the services, including the Coast Guard and the National Guard has been exceptional.

CHAIR HOLTZMAN: That's what I'm gathering; it's good to hear that, but is there something else that should be done in this area is really what I'm asking.
COL. deCAMARA: I think it's being codified under 535, what was required with 535 and what from -- the '16 NDAA is what I'm referring to, with that oversight that OSD is exercising. I know it's still in a draft. I really don't see -- I mean, I think it's formalizing what is already being done so that there is a mechanism for them to record it, but I think the natural -- the dynamic nature of the practice and -- and while I think we all have great personalities, I don't think it's necessarily just personality-driven.

And so, people have rotated in and out. From 2014 to now nobody else was up here in 2014 when I was up here. And so, it's not necessarily personality-dependent. And I think that's -- and I think it's because of the discipline and because of -- I think our TJAGs are picking -- if we want to speak for ourselves, they're picking good people to put in this that are energized for the program and are collaborative in nature. And I think that's --
you're seeing the results of the support that is being given by them as well.

CHAIR HOLTZMAN: Great.

Ms. Cluverius, did you have something you wanted to say?

MS. CLUVERIUS: No, I agree completely with Colonel deCamara.

CHAIR HOLTZMAN: Okay.

MS. CLUVERIUS: I believe that there's been a very robust collaboration. I've never seen anything inter-service like this before. It's been very satisfying and I expect it to continue regardless, as you say, of personalities. It's been very helpful, and it really can be on a daily basis that we share emerging issues. Have you seen this? Have you seen that? And we all pitch in.

CHAIR HOLTZMAN: The other area I wanted to focus on was something that you just addressed or raised, which is the vicarious trauma, because I see that everybody's got a training segment on this. But if people are
actually suffering from vicarious trauma, is it the training session that helps solve the problem, or something --

MR. STONE: Do we know what it is first? I'm not --

(Simultaneous speaking.)

CHAIR HOLTZMAN: Well, let me finish the question, and then whoever answers it first can explain what it is.

Is it really a training program that's going to help solve that problem or is there something else? I mean, do people need to be moved? Do they need to have a break? So I was just curious as to why there's a training program, and if so -- Ms. Cluverius, did you want to respond?

MS. CLUVERIUS: Yes, ma'am. So we --

CHAIR HOLTZMAN: Can you explain what --

(Simultaneous speaking.)

MS. CLUVERIUS: Sure. We actually -- and this came out in our recent symposium when we
had a psychologist come and talk to us about this. We always call it vicarious trauma, but there's levels of it. And so, what we're really sort of looking for is empathy fatigue, which is a lower grade level of vicarious trauma.

But what it; this is my layperson's paraphrasing, is is that it's the holdover emotional sort of draining or struggle when you deal with either an exceptionally difficult case -- oftentimes most of our VLC complain about how they feel when they're dealing with a minor client who's experienced some sort of sexual offense. That's sort of the most common. But it can also be over time having so many cases with the same --

CHAIR HOLTZMAN: It's kind of a burn out --

MS. CLUVERIUS: It's burn out, yes.

CHAIR HOLTZMAN: -- of the prosecutor, basically is what we're talking about.

MS. CLUVERIUS: And that's what -- yes. And that's -- yes, ma'am, that's --
CHAIR HOLTZMAN: Or it's the victim's counsel?

MS. CLUVERIUS: And so we watch for that. And so what the training does, at least what we've been looking for, is just to be educated that this exists to understand what the signs might be in yourself. We go a pretty long way to -- we talk to our VLCs. Between Captain Fischer-Anderson and I we try to talk to everybody once a week. There's 30 of them, so that doesn't always work out. But one way or another we're in touch with them.

They also submit weekly reports and we encourage on that. That's not just numbers collection, but it's also an outline of what they're doing and what kind of cases they have and what's happening with them. And they'll put on there I'm burning out, or they'll talk about a particularly difficult case. And we call them immediately when we see that every week and we give them time off. They are encouraged to take leave. I approve their leave, and I've been on
board almost a year. I've never denied anybody's leave.

And so, we really work hard at watching that, especially with such long tours that we have. We've been watching that on the burn out side as well as the actual -- maybe the one case vicarious trauma. And we have VLC who have raised their hands and said I need to -- when this case is over on Wednesday, I need to -- can I get a leave chit to get out of here? And we absolutely encourage that. And we'll give liberty in an emergency situation as well.

CHAIR HOLTZMAN: So the training program, just so that I can be clear about this, basically calls itself a consciousness raising program in the sense that you're telling the VLC or the SVC, look, this happens. Don't be alarmed.

MS. CLUVERIUS: It's normal.

CHAIR HOLTZMAN: This is normal.

Okay.

MS. CLUVERIUS: Yes, ma'am.
CHAIR HOLTZMAN: Is that a fair characterization?

MS. CLUVERIUS: That is fair. It also gives a little bit of ideas of how to combat that, how to take care of themselves. And then we reinforce that by encouraging all that.

CHAIR HOLTZMAN: Did anyone else want to comment on my question?

COL. MCDONALD: I was just going to say the other thing is that Captain and personnel in ours gives techniques. And it was interesting. We had this last class. One of our counsel was a former area defense counsel and came to us and then went through our training class, and she commented in her feedback in the end-of-course critique I wish the defense counsel actually had this because I'm calling my husband tonight and telling him that we need to -- I need to make sure that I do this technique to help, because I know that this is something that I did when I was a defense counsel that I need to make sure I don't do when I'm an SVC. So I do think
that it's not the end-all-be-all, but those

   techniques to at least spark something.

   And the other thing I think from our

   perspective -- I know the Army doesn't

   necessarily have it, but for those of our offices

   that are a one-deep office, for me the other

   thing that I think is important is getting those

   paralegals, which we are working very hard to do

   so that it is in the paradigm of the area defense

   counsel, defense paralegal so that they are not

   going -- they're not taking that phone call or

   meeting with that client and then sitting in an

   office by themselves. I think having that other

   person there to talk to is so incredibly

   important.

   And while our paralegals have performed

   phenomenally for us, winning quarterly and annual

   awards because they are so engaged and so helpful

   in the process, one of the big reasons that I

   want them is because I want my -- we call it an

   wingman in the Air Force -- I want my counsel to

   have that wingman with them. And I think that's
one area where that paralegal -- a phone call away isn't sufficient.

CHAIR HOLTZMAN: Did you want to say something, colonel?

COL. McDONALD: Oh, I was just going to say; I'm nodding my head in assent, I agree. And also the other thing that we try to do, I know all of us, because we've had conversations, is trying to encourage -- because some of them are younger counsel, is the work-life balance. And it's up to us as the leaders to set the command climate that says, hey, if you need to take the afternoon off to take a deep breath or to go do something to get yourself re-balanced, then do so and we'll run the traps if we need to. But really being hands on. It's probably as much hands on as any command billet would be. And I know all of us feel that same way because we talk about it quite often. But it's that balance that we try to get folks to strive for.

CHAIR HOLTZMAN: Okay. Lieutenant colonel, you've been quiet.
(Laughter.)

LTC KENNEBECK: They're saying everything. I don't need to say anything.

CHAIR HOLTZMAN: Well, I guess that concludes the panel. Thank you very much again for your willingness to appear and for the valuable testimony. And thanks to the other members of the JPP.

LTC STINGL: Absent anything else for the record, the meeting today is closed.

CHAIR HOLTZMAN: Thank you.

(Whereupon, the above-entitled matter went off the record at 3:42 p.m.)
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Judicial Proceedings Panel

Before: US DOD

Date: 05-13-16

Place: Charlottesville, VA

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

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Court Reporter