

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 6**

122. Services: What metrics, if any, are used to measure the effectiveness of training for adult sexual assault cases for prosecutors and defense counsel?

USA	The Army monitors attendance at all military justice training to ensure the requisite level of skills and experience Army-wide. Surveys are administered after every military justice training course to evaluate the effectiveness of the training for all attendees. Additionally, OTJAG, TCAP, DCAP, The Judge Advocate General’s Legal Center and School (TJAGLCS), and the trial judiciary meet bi-annually for a training synchronization meeting to evaluate effectiveness of current training for all aspects of military justice, including sexual assault cases.
USAF	The Air Force JAG School conducts Kirkpatrick Level 3 graduate assessments for most courses, including the Advanced Sexual Assault Litigation Course (ASALC), Intermediate Sexual Assault Litigation Course (ISALC), Special Victims Counsel Course, Advanced Trial Advocacy Course (ATAC), Trial and Defense Advocacy Course (TDAC), Defense Orientation Course (DOC), and Judge Advocate Staff Officer Course (JASOC). Graduate assessments are administered between six and 12 months after course completion. Each graduate assessment surveys course graduates on accomplishment of the course mission, achievement of specific course objectives, and how course instruction has prepared graduates for their duties. For JASOC, the JAG School also surveys the SJAs and supervisors of course graduates on the graduates’ level of proficiency in each of the specific skill sets addressed by the course.
USN	For government counsel, the Trial Counsel Assistance Program (TCAP) Director coordinates with Region Legal Service Office (RLSO) Commanding Officers (CO) to monitor the relative experience levels of trial counsel through on-site, periodic observations of Navy judge advocates in the performance of their prosecution functions. TCAP provides recommendations for improvement as well as resources recommendations to Chief of Staff – Region Legal Service Offices as necessary. <i>See</i> section 1502 of the Naval Legal Service Command (NLSC) Manual, 5800.1G, available here http://www.jag.navy.mil/library/instructions/5800_1G_NLSC_Manual.pdf . Similarly, for defense counsel, the Defense Counsel Assistance Program (DCAP) Director monitors the relative experience levels of trial defense counsel through onsite, periodic observations of Navy judge advocates in the performance of their defense functions. DCAP coordinates with Defense Service Office COs to continually assess the quality of defense counsel functions as well as the professional training and continuing legal education opportunities provided for defense counsel. DCAP Director provides reports to Chief of Staff – Defense Service Offices as required. <i>See</i> section 1202 of the NLSC Manual, 5800.1G.
USMC	For defense counsel, the most common method for measuring the effectiveness of training for adult sexual assault cases is the use of after action reports. These after action reports range from surveys to one-on-one discussions with training attendees. For statistical measures of effectiveness, the DSO maintains a Case Information System that tracks all pending and completed litigation and allows for computation of litigation statistics to include acquittal/conviction rates in sexual assault cases. For example, in FY15 DSO attorneys contested 31 Article 120 offense cases. Of those 31 contested cases, 16 resulted in full acquittals, for an acquittal rate of 52%. During that same FY15 time period, DSO attorneys fully contested 131 courts-martial receiving

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full acquittals in 44 cases, for an acquittal rate of 34%. So statistically speaking, DSO attorneys obtain better results in sexual assault cases than in cases overall. Due to the degrees of freedom associated with these statistics, it is not conclusory that these results are attributable solely to sexual assault litigation training. However, from the defense perspective, this is an indicator that sexual assault litigation training for defense counsel remains important as the high acquittal rate reflects that significant deprivations of liberty as a result of false sexual assault allegations remain a threat to innocent Marines.

Because preparing and successfully prosecuting adult sexual assault cases for trial at court-martial is as much art as science, the Marine Corps uses an approach whereby best practices are modeled by experienced military practitioners and civilian Highly Qualified Experts. Trainees are then expected to demonstrate their mastery of these practices in practical applications while receiving expert feedback. Ultimately, the effectiveness of this training is measured in the courtroom. However, end of course surveys are used to gauge the effectiveness of the training and allow for improvements to future classes.

The information below is an analysis of the end of course survey data from the Marine Corps' FY 2016 Western Region Trial Counsel Assistance Program's Course, Prosecuting Special Victims' Cases. See enclosure (11) for the surveys used and full data set compiled during the 2016 prosecutor training courses.

Skill-based Improvements. 88% of end-of-course survey respondents (respondents) reported measurable improvement on at least 1 concrete skill (85% of officer respondents and 92% of enlisted respondents). 46% of officer respondents and 73% of enlisted respondents reported improvement on three or more skills, as shown in Figure 1, below.

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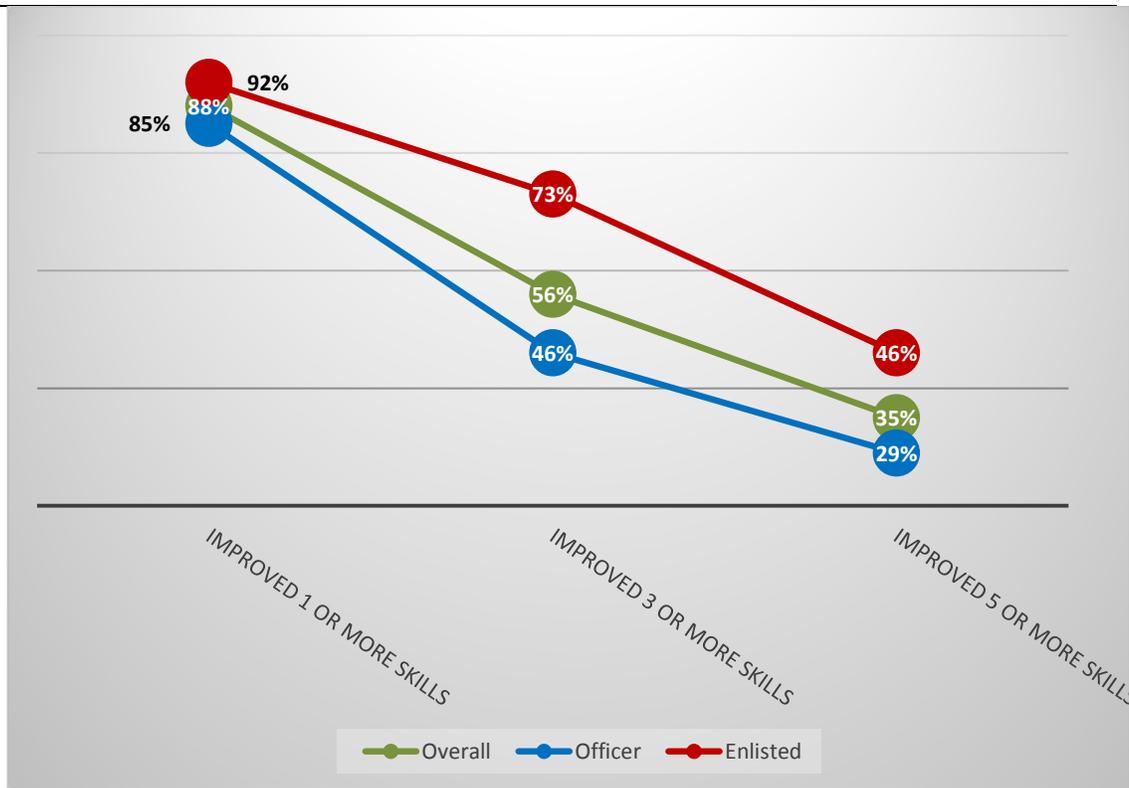


Figure 1. FY 2016 Western Region TCAP Training Assessment for “Prosecuting Special Victims’ Cases” Course

Examining Witnesses. Officer respondents identified their competency at conducting cross examination as lower than that of any other skill surveyed. They also reported significant improvement on this skill throughout the course (self-reported 13% improvement) and identified the portions of the course relating to cross examination as a favorite in terms of content.¹

Trial presence, laying foundation, preparing the victim to testify, and conducting direct examination of the victim were consistently identified by officer respondents as needing emphasis and improvement. Incorporating more practice time for laying foundation and requiring attorneys to move evidence around the courtroom will address at least three of these skills and will also improve another of the skills identified as most needing emphasis: trial/courtroom presence. The classes on conducting direct examination were also rated as a top pick for value in terms of course content, and laying foundation tied

¹ Officers ranked the top 8 courses based on content in the following order:

1. Discovery
2. Theme/Theory
3. Charging
4. Panel with civilian ADAs
5. Objecting
6. Cross Exam
7. Direct Exam
8. Foundations

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with conducting cross-examinations as the skill at which the attorneys made the second greatest improvement over the course of the week (self-reported 13% improvement), and—after this improvement—was judged by them as their best skill (4.1 average on a scale of 1 to 5).

In response to the question “did any class or topic receive too much emphasis?” one officer wrote: “In general, classes focused on theory (e.g. counter-intuitive behavior) are not immediately useful/practical. A topic such as discovery is more immediately useful.” This failure to realize the direct and practical applicability of a class on something like counter-intuitive behavior emphasizes the need to incorporate this instruction with a discussion of victim interviewing, victim preparation, and conducting direct examination of a victim.

Future classes will consider providing more practical application and group discussion/critique time for conducting direct and cross examination; this should include working with, preparing, and eliciting testimony from victims, conducting direct examination of experts, and laying foundation (for real evidence and reputation or opinion testimony) in the direct examination classes and practical applications.

Trial Advocacy. The skill second most identified by the officer respondents as needing emphasis was improving trial/courtroom presence and advocacy. The skill fourth most identified as needing improvement was conducting opening statements, closing arguments, and sentencing arguments. Despite this result, officers identified conducting openings and closing as their second best skill before the training (3.68 average on a scale of 1 to 5). Advocacy typically occurs during closing argument, opening statement, and the conduct of the trial in that order. Consequently, the theme/theory discussions and practical applications lend themselves naturally to discussion and practice of various persuasive techniques. The survey results support this conclusion. Officer respondents chose the theme and theory related courses as the best overall instruction of the week in terms of content and reported a 10.5% improvement in conducting openings and closings—enough for this skill to maintain its number two ranking after training—despite marked improvement in other areas.

Future classes should consider placing greater emphasis on theme and theory focused training, with a focus on practical applications using either the mock case or a real case.

Marine Paralegal Training. An overwhelming number of officer respondents identified discovery as the skill most needing emphasis for enlisted Marines. However, only 1 of the 26 enlisted respondents identified discovery as one of the two Marine paralegal skills most needing improvement. Apart from this disparity, there was general consensus between the enlisted and officer respondents that drafting charges; reading a casefile; talking to, interviewing, and preparing witnesses; and using Microsoft and Adobe products are the skills most needing emphasis. A summary of this data is provided in Figure 2. Future training will place greater emphasis on development of these practical skills.

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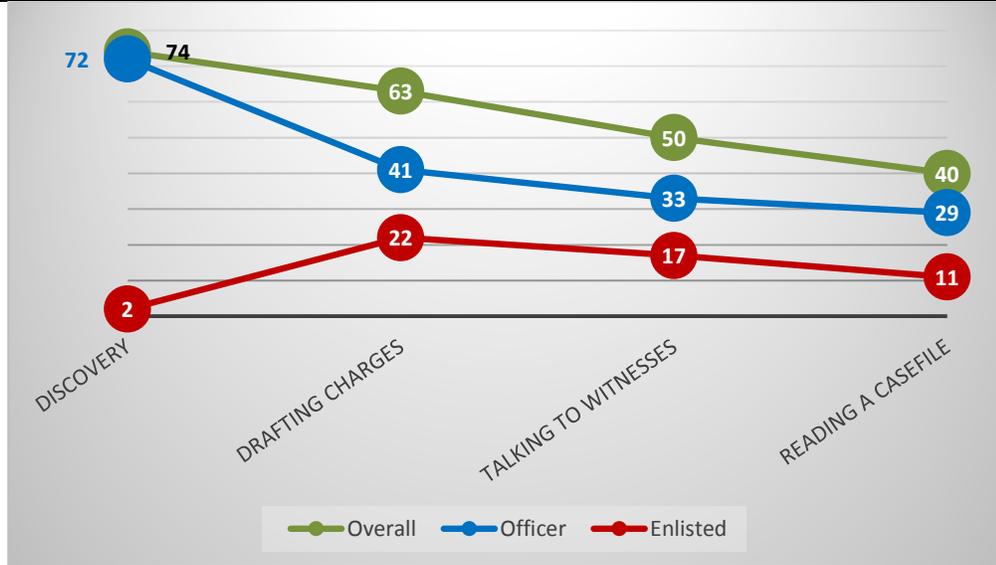


Figure 2. FY 2016 Western Region TCAP Training Assessment of Enlisted Skills Most Needing Emphasis

ENCLOSURE:

FY16 Western Region TCAP Survey

USCG

Coast Guard prosecutors and defense counsel are evaluated using the normal officer evaluation report (OER).