



THE DEFENSE ADVISORY COMMITTEE ON  
INVESTIGATION, PROSECUTION, AND DEFENSE OF  
SEXUAL ASSAULT IN THE ARMED FORCES

19 October 2022

MEMORANDUM FOR THE AIR FORCE JUDGE ADVOCATE GENERAL

SUBJECT: Request for Information Regarding Special Trial Counsel Training

1. On May 10, 2022, the DoD General Counsel tasked the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) with advising on policy development, workforce structure, and implementation of best practices for the Military Department's Offices of Special Counsel.
2. The DAC-IPAD received, in response to a prior Request for Information (RFI), a course agenda for the *Air Force's Judge Advocate Special Trial Counsel Qualification Course* held May 2-6, 2022 at Joint Base Andrews, MD. The DAC-IPAD has expressed interest in learning additional details about this course.
3. I respectfully ask your staff to provide our staff with the response specified in the Request for Information by the date requested (Enclosure).
4. Thank you for your support of this important project. My POC is Mr. Chuck Mason, Data Lead, at (571) 296-5303 or [robert.c.mason2.civ@mail.mil](mailto:robert.c.mason2.civ@mail.mil).

JEFF A. BOVARNICK  
Colonel, U.S. Army  
Staff Director

Enclosure  
As stated

cc:  
Mr. Dwight Sullivan (DoD OGC)  
Service Representative

# **Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)**

**Request for Information from Air Force Judge Advocate General**

**19 October 2022**

## **Special Trial Counsel Qualification Course**

### **I. Purpose**

1. On 11 March 2022, the Secretary of Defense established policies for the Military Departments' Offices of Special Trial Counsel (OSTC) and their personnel (Encl 1).
2. On 10 May 2022, the DoD General Counsel tasked the DAC-IPAD with advising on policy development, workforce structure, and implementation of best practices for the Military Department's OSTC (Encl 2).
3. With the understanding that some of the covered offenses, subject to disposition by the OSTC, include sexual assault crimes, the DAC-IPAD has expressed an interest in further understanding the role of the OSTC and the potential impact to the investigation, prosecution and defense of these offenses involving member of the Armed Forces.

### **II. Authority**

1. The DAC-IPAD is a federal advisory committee established by the Secretary of Defense pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015, as amended by section 533 of the National Defense Authorization Act for Fiscal Year 2019. This request for information is pursuant to section 546(d)(2).
2. The mission of the Committee is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
3. The DAC-IPAD requests the assistance of the Department of the Air Force to provide the requested information by the suspense date indicated below.

### **III. Suspense**

<b>Suspense</b>	<b>RFI</b>	<b>Proponent – Military Services</b>
<b>14 Nov 2022</b>	Documents	Service TJAG provide documents, as provided in Section IV below.

### **IV. Information Requested**

Any reports and/or after action reports (AARs) from the Department of the Air Force's *Judge Advocate Special Trial Counsel Qualification Course* held May 2-6, 2022 at Joint Base Andrews, MD. Reports and/or AARs include, but are not limited to, summary of critiques from program level down to instructors/students and any revised curricula or POI developed or implemented as a result of reports or evaluations of the May 2022 course.



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

MAR 11 2022

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Policies Governing Offices of Special Trial Counsel

In accordance with title 10, U.S. Code, section 1044f, as enacted by section 532 of the National Defense Authorization Act for Fiscal Year (FY) 2022, effective immediately, I establish the following policies for the Military Departments' Offices of Special Trial Counsel and their personnel. These policies will be incorporated in issuances promulgated by the Secretary of each Military Department to be issued within 180 days of the date of this memorandum.

I. Mission

The mission of the Offices of Special Trial Counsel is to provide expert, specialized, independent, and ethical representation of the United States, under the direct civilian control of the Secretary of the applicable Military Department, in the investigation and trial-level litigation of covered offenses as prescribed by article 1(17) of the Uniform Code of Military Justice, 10 U.S.C. § 801(17), and other offenses over which the offices exercise authority.

II. Offices' Establishment

A. Not later than December 27, 2023, the Secretaries of the Military Departments will ensure that an Office of Special Trial Counsel with respect to each Military Service within their respective Military Department is at full operational capability, recognizing that those offices cannot exercise the authorities newly enacted by the National Defense Authorization Act for FY 2022 with respect to offenses that occur before December 28, 2023. In preparation for full operational capability, the Secretaries of the Military Departments will take the following actions, completion of which will be reported to the General Counsel of the Department of Defense:

1. Not later than July 15, 2022, establish the Offices of Special Trial Counsel. For purposes of initial operational capability, the Department of the Air Force may establish a single Office of Special Trial Counsel for both the Air Force and the Space Force.
2. Not later than September 30, 2022, identify recommended nominees for Lead Special Trial Counsel.
3. Not later than October 15, 2022, identify Special Trial Counsel.
4. Not later than December 31, 2022, develop and issue initial training and education policies for the Offices of Special Trial Counsel.



OSD001504-22/CMD001846-22



5. Not later than January 1, 2023, or such later date on which each Lead Special Trial Counsel is confirmed and appointed as a general or flag officer, assign, and where applicable ensure the permanent change of station of, Lead Special Trial Counsel to that permanent general/flag officer position.
  6. Not later than August 31, 2023, assign or detail, and where applicable ensure the permanent change of station of, judge advocates to fill the Special Trial Counsel positions. Until December 27, 2023, either (a) the Lead Special Trial Counsel, or (b) if the Lead Special Trial Counsel has not yet been appointed, the Secretary of the Military Department concerned may make Special Trial Counsel available to perform duties outside of the Office of Special Trial Counsel, provided that the primary duty of the Special Trial Counsel is within the Office of Special Trial Counsel. This authority of the Lead Special Trial Counsel or the Secretary of the Military Department concerned may not be delegated. Beginning on December 27, 2023, the provisions of para. IV.B.4 will apply.
  7. Not later than July 1, 2023, establish standard operating procedures for the Offices of Special Trial Counsel, including the reciprocal agreements required by para. III.B.2.
- B. Pursuant to section 958(b)(1) of the National Defense Authorization Act for FY 2020, Public Law No. 116-92 (2019), the Secretary of the Air Force may designate a single Space Force judge advocate to be the Lead Special Trial Counsel for both the Air Force and the Space Force.

### III. Offices' Functions

- A. All Lead Special Trial Counsel, Special Trial Counsel, and other support personnel deemed appropriate by the Secretary of the Military Department concerned will be assigned to an Office of Special Trial Counsel, which will supervise and oversee the United States' legal representation in the investigation and trial-level litigation of covered offenses as defined by article 1(17) of the Uniform Code of Military Justice, 10 U.S.C. § 801(17), and other offenses over which the office exercises authority.
- B. Independence
1. The Offices of Special Trial Counsel will operate independently of the military chains of command of both the victims of alleged covered offenses and those accused of covered offenses as defined by article 1(17) of the Uniform Code of Military Justice, 10 U.S.C. § 801(17), and any other offenses over which the offices exercise authority.
  2. The Military Departments will enter into reciprocal agreements to provide for the legal representation of the United States in the investigation and trial-level litigation by another Military Service's Office of Special Trial Counsel of any

offense over which an Office of Special Trial Counsel is precluded from exercising authority because either the alleged offender or victim is a member of the relevant Office of Special Trial Counsel (see para. III.B.1).

3. Special Trial Counsel will conduct their assigned activities free from unlawful or otherwise unauthorized influence or coercion.

#### IV. Personnel

##### A. Office Head

1. Each Office of Special Trial Counsel will be headed by a general or flag officer with significant military justice experience with the title, "Lead Special Trial Counsel."
2. To promote both the appearance and the actuality of independence to the maximum extent possible, each Lead Special Trial Counsel will serve for a specified fixed term of not less than three years, with an option for that term to be renewed for a subsequent fixed term or terms of any length. A Lead Special Trial Counsel may be relieved of duty prior to the end of his or her term only for cause, unless he or she leaves active duty or is promoted. The Secretaries of the Military Departments will promulgate issuances governing the grounds and procedures for relieving a Lead Special Trial Counsel for cause. Only the Secretary of the Military Department concerned or the Secretary's superior may relieve a Lead Special Trial Counsel for cause.
3. Each Lead Special Trial Counsel will report directly to the Secretary of the Military Department concerned with no intervening authority.
4. No Lead Special Trial Counsel may be assigned any additional duties with the following exception. If favorably endorsed by a Lead Special Trial Counsel, a request for that Lead Special Trial Counsel to serve on an officer promotion selection board may, at the discretion of the Secretary of the Military Department, be granted.
5. No Lead Special Trial Counsel may be supervised or rated by anyone other than the Secretary of the applicable Military Department.
6. In cases over which an Office of Special Trial Counsel exercises authority, the Lead Special Trial Counsel of the applicable Military Service will have exclusive authority to determine whether to file an appeal under Article 62 of the Uniform Code of Military Justice (10 U.S.C. § 862), in consultation with appellate government counsel in the office of the Judge Advocate General of the applicable Military Department. Appellate government counsel will litigate those appeals on behalf of the United States and are responsible for the substance and content of submissions to the appellate courts.



## B. Special Trial Counsel

1. Special Trial Counsel will be assigned to the Office of Special Trial Counsel for a fixed term of not less than three years. Those assignments may, with the permission of the applicable Judge Advocate General or, in the case of Marine Corps judge advocates, the Commandant of the Marine Corps, be renewed for subsequent fixed terms of any length. Each Military Department's issuance governing its Office or Offices of Special Trial Counsel will provide that a Special Trial Counsel may be released before the end of the fixed term only if the Special Trial Counsel leaves active duty or at the direction or with the permission of the Lead Special Trial Counsel with notice to the applicable Judge Advocate General or, in the case of Marine Corps judge advocates, the Commandant of the Marine Corps.
2. Special Trial Counsel will be highly skilled, experienced, well-trained, and competent in handling the investigation and trial-level litigation of covered offenses.
3. Special Trial Counsel will be supervised and rated only by personnel assigned to the applicable Office of Special Trial Counsel.
4. The Military Services will instruct promotion boards to value litigation experience.
5. A request may be made to a Lead Special Trial Counsel to detail a Special Trial Counsel to a case that does not fall under the authority of an Office of Special Trial Counsel. The Lead Special Trial Counsel will have exclusive and unreviewable authority to grant or deny such a request. If a Special Trial Counsel is detailed to a case that does not fall under the authority of an Office of Special Trial Counsel, no one other than a member of an Office of Special Trial Counsel will prepare a performance evaluation for the Special Trial Counsel for the period during which the Special Trial Counsel performs those duties.

## V. Command Input

The commander of any victim of an alleged covered offense and the commander of any accused in a case involving a covered offense will be given a reasonable opportunity to provide input to the Special Trial Counsel regarding case disposition, but that input is not binding on the Special Trial Counsel.

## VI. Training

The Lead Special Trial Counsel will establish appropriate training programs for personnel assigned to their respective offices. Joint training among the Military Services' Offices of Special Trial Counsel is encouraged. Lead Special Trial Counsel are encouraged to

have personnel assigned to their respective offices participate in training with judge advocates outside of the Offices of Special Trial Counsel in addition to appropriate specialized training within the Office of Special Trial Counsel concerned. Lead Special Trial Counsel are encouraged to send their respective personnel to training programs outside the Department of Defense, including those offered by the Department of Justice.

#### VII. Exceptions to Policy

Exceptions to these policies may be granted only by the Secretary of Defense or the Deputy Secretary of Defense. That authority may not be delegated.

A handwritten signature in black ink, appearing to read "R. J. Lust". The signature is written in a cursive, stylized font.



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
1 600 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-1600

MAY 10 2022

GENERAL COUNSEL

MEMORANDUM FOR CHAIR, DEFENSE ADVISORY COMMITTEE ON  
INVESTIGATION, PROSECUTION, AND DEFENSE OF  
SEXUAL ASSAULT IN THE ARMED FORCES (DAC-IPAD)

SUBJECT: DAC-IPAD Advice on Policy Development, Workforce Structure, and  
Implementation of Best Practices for the Military Departments' Offices of Special  
Trial Counsel

As requested in your letter of April 27, 2022, I task the DAC-IPAD with advising the Secretary of Defense and me on policy development, workforce structure, and implementation of best practices for the Military Departments' Offices of Special Trial Counsel. The Department of Defense would benefit greatly from the advice of the DAC-IPAD, whose members possess extraordinary expertise regarding the organization and operation of offices devoted to complex prosecutions, concerning the Offices of Special Trial Counsel. Advising the Department regarding the Offices of Special Trial Counsel is a core function of the DAC-IPAD. Please provide such advice on an ongoing basis.

Consistent with your request, I have asked the Secretaries of the Military Departments to provide the appropriate civilian officials, supported by uniformed subject matter experts, to appear at the DAC-IPAD's next public meeting.

I reiterate my thanks to you and to all of the DAC-IPAD's members for assisting the Department of Defense in improving our sexual assault response systems.

Caroline Krass  
General Counsel







**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
WASHINGTON, DC**

**MEMORANDUM FOR THE DEFENSE ADVISORY COMMITTEE ON INVESTIGATION,  
PROSECUTION AND DEFENSE OF SEXUAL ASSAULT IN THE  
ARMED FORCES**

**SUBJECT:** Department of the Air Force 2021 Special Trial Counsel Qualification Course,  
held 2-6 May 2022 at Joint Base Andrews Naval Air Facility

On 19 October 2022, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) requested information on the Department of the Air Force's *Judge Advocate Special Trial Counsel Certification Course* for any reports, including a summary of critiques from the program level down to the instructors and students and any revised curricula for follow on courses.

I have attached two responsive documents for DAC-IPAD's consideration. The first is the curriculum for the 2022 Special Trial Counsel Qualification Course, which provides further detailed information regarding the material taught at the course. The second is the 2022 *Special Trial Counsel Qualification Course* Feedback Report, which summarizes the student and instructor feedback. Efforts to develop the 2023 Special Trial Counsel Qualification Course are underway, and as we finalize the curriculum and Standards of Learning, we will share as appropriate.

Please reach out to me at any time. You may also contact my POC for these matters, Mr. Vance Spath. His email is [vance.spath.1@us.af.mil](mailto:vance.spath.1@us.af.mil), and his phone is (301) 848-0938.

CHARLES L. PLUMMER  
Lieutenant General  
The Judge Advocate General

2 Attachments:

1. 2022 Special Trial Counsel Qualification Course Curriculum
2. 2022 Special Trial Counsel Qualification Course Feedback Report

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## Executive Summary

On 2-6 May 2022, the Department of the Air Force (DAF) held its first Special Trial Counsel Qualification Course (STCQC). The goal of the STCQC is to educate, train, and evaluate prospective Special Trial Counsel (STC), through lectures, discussion, practical exercises, and a qualification examination. Training was administered by the Government Trial and Appellate Operations Division (AF/JAJG). There were a variety of instructors including then-Special Victims Unit – Circuit Trial Counsel (now STC), Appellate Government Counsel, Department of Justice attorneys, special agents, and forensic experts in psychology and digital evidence. At the end of each day, students provided feedback on each block of instruction. At the conclusion of the course, students then provided feedback on the course as a whole. Feedback received from the 2022 inaugural STCQC informs the DAF’s planning and curriculum for the 2023 STCQC.

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## Report

### **I. BACKGROUND**

#### **A. Special Trial Counsel Qualification Course (STCQC)**

The DAF is committed to ensuring judge advocates are experienced, prepared, and qualified to handle covered offenses. As an example of its commitment, the DAF conducted its initial STCQC in May 2022. The week-long course included expert instructors from a variety of fields, including prosecuting sexual assault and domestic violence cases, pediatric medicine, advanced criminal investigations, and Department of Justice prosecutorial offices specializing in electronic/online and child crimes. In furtherance of the critical partnership between law enforcement investigators and prosecutors, nine agents from the DAF Office of Special Investigations attended the course. The course is scheduled to be held annually; successful completion is required for certification as a Special Trial Counsel.

#### **B. Feedback Process**

A pillar of DAF training is feedback from students and instructors. For the STCQC, each attendee was encouraged to provide feedback after each day of instruction. To aid in the feedback submission process, the DAF used a QR code for each day, which allowed attendees to easily access the feedback forms via their mobile devices and provide feedback while the instruction was fresh in their minds. The feedback form asked attendees to answer specific questions on each block of instruction, and also provided the opportunity to give narrative feedback. At the end of the course, each attendee completed an additional feedback form on the course as a whole. Feedback was compiled, analyzed, and incorporated into planning for the DAF’s next STCQC, tentatively scheduled for May-June 2023.

## **II. FIRST ANNUAL STCQC FEEDBACK SUMMARY**

### **A. Overarching Course Feedback**

The feedback was overwhelmingly positive. Students enjoyed the course, with 71% of students stating they “strongly agreed” they received valuable litigation instruction during the week, and the remaining 29% percent stating they “agreed.” Students reported the most significant strength of the course was the “instructors and collaborations with other [litigators].” Students stated the “level of presenters from both JAJG and outside organizations was the biggest value added,” and that they enjoyed the fact that the course “utilized a wide variety of instructors.”

Students reported having enjoyed the breadth of information provided, along with the range of instructors. Students preferred those sessions which were co-taught by subject matter experts and prosecutors because they not only provided relevant information, but also explained how the students should use the information in effectively prosecuting the case.

### **B. Specific Lesson Feedback**

Students also provided feedback on the daily blocks of instruction. Some of the blocks of instruction students particularly valued were:

Key Evidence in Child Abuse Cases Including Forensic Interviews. In this briefing, a Child Forensic Interviewer and an experienced prosecutor teamed together to discuss evidence in child abuse cases. The Child Forensic Interviewer demonstrated the difference between how children are able to focus in interviews and answer questions by showing videos of her children over the span of several years. 75% of students rated the block of instruction as a 5/5. Specific feedback was that the two briefers did an excellent job utilizing videos to illustrate their briefing points.

Direct and Cross Examination of Children and Residual Hearsay. 75% of students rated the brief a 5/5 and the remainder rated it a 4/5. Feedback quotes included that “this was exceptional and should be taught at all the [military justice] classes,” and the brief was “very logically presented and practical.” This underscored the point that the student appreciated briefs that focused on the practical application of the material.

Strangulation. This block of instruction was taught by a Sexual Assault Medical Forensic Examiner, and the students highly valued her expertise, stating “this was fantastic and very useful to have a great expert here.” The only suggested improvement was to request template directs or having a breakout session where students could conduct directs of the expert.

Pre-referral Judicial Actions. Feedback for this block was overwhelmingly positive. The instructor provided a deep dive into how to obtain Article 30a, UCMJ, warrants, the type of material that can be found, and templates for pre-referral judicial actions. During this block of instruction, experienced prosecutors provided stories about their own experiences with pre-referral judicial actions, to include certain companies that they ran into issues with, and what companies



were amenable to the process. Students found the experiences shared by experienced prosecutors very valuable. Feedback included “excellent briefing, thought provoking on how it will be used in future cases,” and “very practical and useful.”

Non-accidental Trauma (Child Abuse). Students commented that they thought that the lecture was focused more on diagnosing non-accidental trauma, rather than how to use a child abuse pediatrician and how to deal with the cases. Specific feedback included “I think splitting this brief in half and sharing it with an experienced lawyer’s perspective would have been helpful. This started to get too far into the weeds of medical expertise, and “I would have preferred a broader approach and then pivoted more to litigation tips.”

### **C. Suggested Improvements**

The student’s number one suggested improvement was to extend the course from one week to two weeks. The majority of students suggested a longer course, with sections focused on the different experience levels of the students. Below are a few examples of how the students recommended structuring the next course:

“One week should be an orientation course that covers the nuts and bolts of being a [STC] along with the basics of working with law enforcement and common issues in common cases, and the second week should be an advanced training for all members...that focuses on emerging or current issues in the field.”

“Consider break-outs for experienced STCs and incoming personnel and/or a two week course in which experienced people attend only one week. With the new OSTC model, could do the first week focused on investigations, and the second week focused on more complex topics and litigation techniques.”

Students wanted more “nuts and bolts” lessons on how to be a STC. For example, a student provided the feedback “as an incoming [senior prosecutor], I would have benefitted from talking about a lot of the logistical issues [senior prosecutors] handle. . . . How are folks setting themselves up for success with ATCs [Assistant Trial Counsel] – what do you send to the base from the beginning of the investigation, and how do you make sure your ATC is ready for trial? How do you manage your case schedule?”

Other students suggested more practical application instruction from senior litigators. Many students wanted examples from senior litigators as to how they would be putting the lessons taught to use in court. For example, students suggested seasoned litigators provide small demonstrations of skills taught throughout the course. In fact, this was a common request throughout the feedback.

### **III. Feedback Based Curriculum Improvements**

Using the feedback from the first STCQC, the DAF plans significant enhancements to the curriculum for the next STCQC.

Course length. One way to incorporate the students' feedback about having the introductory briefings on how to be a STC, and then to have more advanced lectures, is to host a two-week course. STC candidates attend the first week, with instruction focusing on black letter law, setting expectations, and providing briefings about how to be a lead prosecutor. With two weeks, briefings from the first STCQC that participants favorably received can be repeated in the first week for STC candidates. For example, the briefing regarding OSI capabilities was extremely well received. However, it is not necessary to go over the same capabilities for certified STC.

Continue including relevant agencies. Students found tremendous value added from the subject matter experts—ranging from the OSI Agents briefing on digital technology and child forensic interviews to the Department of Justice briefing on child exploitation. The DAF should continue to utilize the resources available, to include reaching out to the National Center for Missing and Exploited Children (NCMEC), the Department of Defense Cyber Crime Center (DC3), and additional government agencies, for subject matter experts to serve as instructors.

Practical applications. When developing lessons plans, each instructor should be directed to focus on the “why” of the material. Why is it important for litigators to know this information? For example, with the non-accidental trauma course, why does a litigator need to be able to identify the mechanism of injury? Instructors should develop the course with the practical application goals in mind. In another example for those courses centered on advocacy, instructors could create blocks of instruction so that students receive a description of the relevant content, then use that instruction to conduct a mock examination as a group, and then talk through how to utilize the facts elicited through the examination in closing. The block of instruction could be followed with a breakout session, where students engage in a practical exercise.

Modelling from senior litigators. Due to the wealth of experience that our sitting STC have, many students commented that one of the most valuable takeaways was learning from the experienced litigators in the room. At the next STCQC, there should be more instances in which the STC model how they conduct examinations, admit evidence, make closing argument, etc.

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## Conclusion

The DAF is fully committed to training, preparing, and equipping its litigators chosen to serve as STC. The first annual STCQC, held in May 2022, was successful and provided necessary training to the DAF's first cadre of STC. By utilizing a robust feedback process, the DAF plans to improve upon the first course's success, enhancing the quality and breadth of instruction.



# Special Trial Counsel Qualification Course Agenda & Curriculum

Joint Base Andrews, MD  
2-6 May 2022





# Special Trial Counsel Qualification Course

## COURSE CURRICULUM

### Day 1 – Monday, 2 May 2022 – Investigative Solutions & Strategies

0800-0850	Welcome & Orientation
0900-1030	Special Victims Investigation & Prosecution (SVIP) Capability & <i>Workshop: Maximizing the Value of SVIP</i>
1045-1215	Memory, Cognitive Interviews & <i>Discussion: Employing Advanced Interviewing Techniques</i>
1330-1515	Understanding Pre-Referral Judicial Process & <i>Discussion: Electronically Stored Information Affidavits</i>
1530-1715	Investigator Teaming: Understanding OSI Forensic Capabilities & <i>Exercise: Teaming with Military Criminal Investigating Officers</i>

### Special Victims Investigation & Prosecution (SVIP) Capability

Instructor: Maj Jessica Delaney

**Read-ahead:** Review P.L. 112-239 §573(a)(1); DoDI 5505.19, Enclosure 2; DAFI 51-201 § 22B

**Lesson Description:** This lesson identifies and explains the statutory and regulatory basis of the SVIP requirement: the 2013 NDAA, DoDI 5505.19, and Section 22B of AFI 51-201. Instruction will also address current compliance issues with SVIP and the DOD IRC recommendations and guidance. Moving on from the current structure, this lesson will preview the change from the current SVIP model to the new Investigation and Prosecution Support Team (IPST). Finally, this lesson will preview the future of SVIP and emphasize how senior litigators can best partner with their bases to provide meaningful investigation advice. Expectations for STCs collaborating in SVIP / IPST will be briefed alongside triage requirements and recommendations. (45 mins)



## STC Qualification Course Curriculum

**Workshop Description:** Students will then be divided into small groups. Each group has a facilitator. Taking the information they just received, students discuss how to maximize the SVIP/IPST capability with their base legal office assignments, and how to maximize and improve communications within each circuit. . Students who have served as part of SVIP teams will also discuss their own closed SVIP cases and discuss proposed solutions to identified problems. Small groups may also discuss questions regarding the requirements/history/new structure for SVIP/IPST. (30 mins)

The entire group will reconvene. An opportunity will be provided for Q&A, or for any best practices to be shared. (15 mins)

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### **Memory, Cognitive Interviews & Discussion: Employing Advanced Interviewing Techniques**

**Instructors:** Dr. Jennifer Steel

**Lesson Description:** Taught by a psychologist and prosecutor team, this block focuses on the science of memory formation. The psychologist will provide students with a basic understanding of how memory is formed, stored, retrieved, and degraded over time. Instruction will also cover the relationship between memory and trauma as well as memory and alcohol. An experienced prosecutor will team with the psychologist to elaborate on common scenarios where victims and witnesses have memory issues. The prosecutor will also discuss how to use or cross-examine the “science of memory” expert testimony in court-martial. (40 mins)

**Discussion Description:** The instructors will play clips showing effective and ineffective interview techniques. In small groups, students will discuss techniques they found useful and practice the cognitive interview techniques by simulating that the video clips continued. Facilitators and floating staff will observe and interact with students. (40 mins)



## STC Qualification Course Curriculum

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### ***Pre-Referral Judicial Process & Discussion: Advanced Tips for Drafting the Electronically Stored Affidavit***

**Instructor:** Colonel Steven Grocki

**Read-ahead:** Review 18 U.S.C. § 2701-2712, 10 U.S.C. § 830a, R.C.M. 703A

**Lesson Description:** This lesson focuses on Article 30a proceedings, the Stored Communication Act, RCM 703A, and the effective use of pre-referral investigative subpoenas, court orders, and search warrants. The instructor will provide students step-by-step instruction on the process to employ each pre-referral judicial process. At the end of the lesson, students should be able to provide the same instruction to the field. (45 mins)

**Discussion Description:** This discussion focuses on advanced techniques for litigators to train their junior counsel to successfully request and obtain an electronically stored information (ESI) warrant. The instructor will provide an example of what a “good” ESI warrant includes and explain the significance of its constituent parts to the students. The instructor will engage students in a discussion on (a) finding and providing evidence necessary to link the ESI to the accused and the place to be searched, (b) common pitfalls in ESI warrants, and (c) problems seen by litigators in the field. At the end of the briefing, students should be able to train their junior counsel on how to identify and describe the evidence needed to produce an ESI warrant that will yield evidence for trial. (60 mins)

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### ***Investigator Teaming: Understanding OSI Forensic Capabilities & Exercise: Teaming with Military Criminal Investigators***

**Instructor:** SA Ashlee Wega & Maj Nate Lagley

**Lesson Description:** Taught by an OSI Agent Forensic Consultant & an experienced prosecutor, this block focuses on the forensic tools OSI has at its disposal for use by the case agents and prosecutors in the field. The OSI instructor will identify the capabilities and explain the benefits and limitations of these capabilities. The prosecutor will team with the OSI agent to expound on best practices for teaming with OSI to secure forensic data with real world case examples. (50 mins followed by 10-minute break)

**Exercise Description:** In small groups, students will discuss common hurdles they encounter when teaming with MCIOs on investigations. One representative from each group will compile the group’s final list of discussion items and present to the larger group. Each representative should outline the key questions their group grappled with and pose questions and proposed solutions to the larger group. (60 mins)





## STC Qualification Course Curriculum

### Day 2 – Tuesday, 3 May 2022 – Article 120 Cases

0800-0945	Advanced Evidence & Charging Techniques in Adult Sexual Offense Cases & Discussion: Charging Lessons
1000-1145	Digital Evidence to Win the Sex Offense Case
1300-1440	Key Evidentiary Rules in Sex Offense Cases (404(b), 412, 413)
1455-1600	Appellate Scenarios & Discussion: Prosecutorial Misconduct, Improper Argument
1615-1715	Victim Impact Statements Lesson & Workshop

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#### Advanced Evidence & Charging Techniques in Adult Sexual Offense Cases & Discussion: Charging Lessons

**Instructor:** Maj David Cisek (Evidence & Charging Lesson) & Maj John Patera (Discussion)

**Lesson Description:** Taught by a prosecutor with substantial experience in prosecuting adult sexual offense cases, this block provides an advanced look into developing and maximizing key evidence in adult sexual offense cases. Key strategies will be explained regarding identifying obtainable, but often overlooked evidence as well as employing strategic charging based on admissible evidence. The instructor will provide case scenarios to engage the students in discussion on techniques for evidence organization and strategic charging. Senior litigators in the course will be prompted to engage in discussion as to what best practices they've used in the field as well. (55 mins)

**Discussion Description:** An appellate counsel will present hypothetical fact patterns on a slide deck about charging decisions in sexual offense cases (LIOs, major v. minor changes, etc). After soliciting discussion from students about the fact patterns, the instructor will reveal which case the facts drew from, how the court ruled, and lessons learned for prosecutors. (50 mins)

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#### Digital Evidence to Win Sex Offense Case

**Instructor:** Col Steven Grocki & Mr. James Fottrell



## STC Qualification Course Curriculum

**Lesson Description:** Taught by a former military judge/current lead DOJ prosecutor in the sex crimes division and by a DOJ Examiner, this block takes a deep dive into the various types of digital evidence available to law enforcement during the investigation portion of a case. Instruction will distinguish between electronic data maintained on the user's device and electronic data maintained on the cloud. (40 mins followed by 5-minute transition)

**Workshop Description:** Students will be divided into small groups to discuss common pitfalls they see when teaming with law enforcement on these types of cases. One representative from each group will be chosen to brief the larger group on the takeaways from their group's discussion. Students will be instructed to focus on hurdles they see, solutions they've used or thought of using, and questions for the larger group discussion. (30 mins)

Students will return to the larger group to present their group's findings to the larger group for discussion. (30 mins)

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### Key Evidentiary Rules in Sex Offense Cases (404(b), 412, 413)

**Instructor:** Maj Tom Olsen

**Read-ahead:** *US v. Hyppolite*, 79 MJ 161; *US v. Watkins*, 21 MJ 224; *US v. Moore*, 78b MJ 868; *US v. Leonhardt*, 76 MJ 821; recent rulings from circuit trial judges, recent circuit newsletters from judges regarding any of these rules

**Lesson Description:** Taught by an experienced prosecutor, this block is divided into three parts to cover each of the three most commonly used MREs in sex offense cases. Each 30-minute block will include a brief introduction of the seminal cases on the rule and a scenario-based discussion of recent decisions. Presentation of these cases will be done in an interactive manner, with the instructor changing the fact pattern of the case and engaging in discussion with the students on how the ruling would change.

MRE 404(b) discussion will include the most commonly used non-propensity reasons for admissibility. MRE 413 discussion will include success stories from senior CTCs/DTOs about how they've used the rule. Regarding MRE 412, the instructor will provide students with the most important case law applicable to defining what constitutes "other sexual behavior" and "sexual predisposition." The instructor will provide students with the most important case law applicable to determining the scope of the consent exception under Mil. R. Evid. 412(b)(2) and the constitutional exception under Mil. R. Evid. 412(b)(3).

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### Appellate Scenarios & Discussion: Prosecutorial Misconduct, Improper Argument



## STC Qualification Course Curriculum

**Facilitators:** Maj Cortland Bobczynski & Maj Allison Gish

**Read-ahead:** JAJG Arguments Handbook

**Discussion Description:** Students will be given the facts of cases regarding allegations of prosecutorial misconduct and improper argument. Students will be engaged with specific portions of transcript exised & displayed on PowerPoint. Students will discuss how the law applies, where common pitfalls are, and how prosecutors can effectively and appropriately argue. Then, hypotheticals will be given cases will be modified from their original form to engage all students, even if they have read the cases and know the holdings. Specific attention will be given to cases where an accused has made inconsistent statements and how the prosecutor can legally and strategically argue this favorable evidence. (65 mins)

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### Victim Impact Statements Lesson & Workshop

**Instructor:** Maj Joseph Lingenfelter

**Lesson Description:** The instructor will discuss the background/development of victim impact statements (VIS). The instructor will ask a series of questions requiring participants to give input regarding whether their involvement in the VIS with a variety of factors (VC, no VC, child victim). Questions will also be posed to the group regarding how often they see various forms of the VIS: written, verbal statement, or question and answer form. Appellate cases with recorded VIS will be discussed. (40 mins)

**Workshop Description:** In small groups, students will be given examples of VIS with admissible and inadmissible content. Students will be assigned roles as either trial counsel or defense counsel and must argue their positions regarding the admissibility of the statement to their small group facilitator, drawing on the relevant caselaw and lesson they just had. (40 mins)

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## STC Qualification Course Curriculum

### Day 3 – Wednesday, 4 May 2022 – Intimate Partner Violence (IPV)

0800-0930	<b>Key Evidence in Intimate Partner Violence Cases &amp; Discussion: Strategic Use of Mil. R. Evid. 404(b) in IPV Cases</b>
0945-1045	<b>Partnerships for Investigation Success in IPV Cases: Medical Law Consultants</b>
1100-1150	<b>Experts in IPV Cases</b>
1300-1500	<b>Strangulation Lesson &amp; Workshop: Direct Examination of an Expert</b>
1515-1715	<b>Student-Led Briefings</b>

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#### **Key Evidence in Intimate Partner Violence Cases & Discussion: Strategic Use of Mil. R. Evid. 404(b) in IPV Cases**

**Instructor:** Maj Morgan Christie

**Lesson Description:** Taught by a former prosecutor with significant experience prosecuting IPV cases, this block provides an overview of key evidence in IPV cases. Examples include, but are not limited to, witness testimony, admissible hearsay, medical records, and expert testimony. This lesson will engage the students on the power of photographic evidence, how to effectively cross an accused, how to overcome perceived “counter-intuitive victim behaviors,” as well as how to charge and prove strangulation. (45 mins)

**Discussion Description:** Fact patterns based upon recent military cases with possible MRE 404(b) evidence will be presented. The group will discuss the pros/cons of using that evidence from both legal and strategic standpoints. The instructor will reveal the case, its holdings, and lessons learned for prosecutors. (45 mins)

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#### **Partnerships for Investigation Success in IPV Cases: Medical Law Consultants**

**Instructor:** Maj Grant Farnsworth, Ms. Robin Brodrick

**Read-ahead:** DoDM 6025.18, HIPAA Privacy Rule Compliance in DoD Health Care Programs; MRE 803(4), (6); MRE 901(11)

**Lesson Description:** In an IPV case, medical records can provide strong evidence a crime was committed. In this block, the MLC will explain HIPAA and its exceptions. The ADO instructor will utilize scenario-based discussion to cover how to obtain medical records, how



## STC Qualification Course Curriculum

to authenticate them, and how to admit them in a court-martial. All instructors will share tips and encourage student participation on how to educate the field on teaming methods with MLCs and health care facilities for efficient discovery of medical records. Discussion prompts will engage students to interact about what hurdles they have encountered on this topic in their own practice and how they worked to overcome the hurdles. (60 mins)

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### Experts in IPV Cases

**Instructor:** MAJ Campbell Warner & Maj Jasmine Prokscha

**Read-ahead:** Mil. R. Evid. 703

**Lesson Description:** The instructors will engage students in a scenario-based discussion of how to effectively use experts in IPV cases. Three examples include: (1) complex & chronic trauma in sentencing; (2) power & control in the Duluth cycle of violence regarding why a spouse stays with an abuser; and, (3) gist memory in findings regarding why a victim may not remember significant details. (50 mins)

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### Strangulation Lesson & Workshop: *Direct Examination of an Expert*

**Instructors:** Maj David Cisek & Allyson Cordoni

**Read-ahead:** 26 January 2022 Executive Order; Article 128b, UCMJ

**Lesson & Workshop Description:** Taught by a SAMFE & an experienced prosecutor, this block will cover the medical signs and symptoms of strangulation and how they are often overlooked by law enforcement first responders. An experienced prosecutor will brief on the new elements and definitions for strangulation, encouraging students to teach their bases to use the new Article 128b, UCMJ to charge strangulation. For the workshop portion, the prosecutor instructor will explain effective use of an expert at trial by demonstrating a direct examination. Students will be encouraged to contribute additional direct examination questions, popcorn-style, in certain sections of the examination. (120 mins)

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### Student-Led Briefings

**Facilitators:** DTOs & Appellate Counsel

**Lesson Description:** Students will be assigned topics before the course. Students will be required to brief the topic to their assigned small groups during this session. Each student will get 20 minutes to brief and 5 minutes of feedback. (120 mins)





## STC Qualification Course Curriculum

### Day 4 – Thursday, 5 May 2022 – Child Abuse Cases & Qualification Exam

<b>0800-0950</b>	<b>Key Evidence in Child Abuse Cases including Child Forensic Interviews</b>
<b>1000-1050</b>	<b>Direct &amp; Cross Exams of Children &amp; Residual Hearsay</b>
<b>1100-1150</b>	<b>Understanding Non-Accidental Trauma</b>
<b>1330-1430</b>	<b>STC Qualification Exam</b>
<b>1445-1630</b>	<b>Moot Courts</b>

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#### Key Evidence in Child Abuse Cases including Child Forensic Interviews

**Instructors:** Maj Morgan Christie & Dr. Eanah Whaley & SA Lauren Henry

**Course Description:** Instructors include a prosecutor with substantial experience in prosecuting child abuse cases as well as an OSI agent trained in child forensic interviews (CFIs). This block provides an overview of key evidence in both sexual and physical child abuse cases. Examples include, but are not limited to, medical records, witness testimony, and expert testimony. The instructor will highlight strategies for identifying obtainable, but often overlooked evidence. Additionally, the instructor will identify common issues and defenses in these cases such as coaching, defense experts/theories to challenge at a Daubert hearing, the absence of direct evidence, and strategic charging. During each transition between topics, the instructors will engage the students in discussion to recap each topic.

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#### Direct & Cross Exam of Children & Residual Hearsay

**Instructor:** Maj Morgan Christie

**Read-ahead:** R.C.M. 703B; Mil. R. Evid. 807

**Lesson Description:** This lesson focuses on the mechanics of eliciting testimony from a child during direct exam and cross-exam. The lesson will also cover the rules and cases associated with remote live testimony and residual hearsay. The instructor will provide scenarios to the students and engage in a discussion on how the students would handle the situations provided.

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#### Understanding Non-Accidental Trauma



## STC Qualification Course Curriculum

**Instructor:** Dr. Amy Gavril

**Lesson description:** This lesson covers the sorts of injuries that are highly-specific for child abuse. The lesson will also cover the what it means to be a child abuse pediatrician and the role of a child abuse pediatrician in the clinical and forensic setting. The lesson will also discuss how a child abuse pediatrician can be used in a child abuse prosecution.

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### STC Qualification Exam

**Exam Facilitator:** Maj Grant Farnsworth

**Block description:** This block will include a written examination for each student to take on their computer. The examination will be comprised of 1-5 questions regarding each previous block taught during this week of instruction. The examination will also include other baseline information that students are expected to know at this point in their career regarding the Uniform Rules of Practice, the Rules for Courts-Martial, the Military Rules of Evidence, and AFI 51-201.

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### Moot Courts

**Facilitator:** Maj Britney Spears, Maj Cortland Bobczynski

**Read-ahead:** *U.S. v. Richards*; *U.S. v. Palacios-Cueto*; Appellate Briefs to the Court

**Moot Court Description:** Current appellate counsel will complete moot courts of their upcoming appellate arguments before the Court of Appeals for the Armed Forces.



## STC Qualification Course Curriculum

### Day 5 – Friday, 6 May 2022 – Advanced Litigation

0800-1000	Admitting Prior Statements: Scenarios & Strategies Workshop
1015-1045	Resiliency in Practice
1100-1200	SVU & Appellate Perspective: Tips for Litigators
1200-1215	Closing Remarks
1215-1230	EOC Feedback & CTC Dismissal
1230-1330	<b>*DTO ONLY* LUNCH</b>
1330-1530	<b>*DTO ONLY* Leadership Session</b>

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#### Admitting Prior Statements: Scenarios & Strategies

**Instructor:** Lt Col Tom Alford

**Read-ahead:** Review Mil. R. Evid. 801-804; *U.S. v. Frost*, 79 M.J. 104; *U.S. v. Finch*, 79 M.J. 389; *U.S. v. Ayala*, 81 M.J. 25; *U.S. v. Norwood*, 81 M.J. 12; *U.S. v. Drinkert*, 81 M.J. 540

**Lesson Description:** Taught by a former military judge, this block provides the students with strategies to admit prior statements in court. This block focuses on the pertinent hearsay exceptions and how to persuade the court to admit prior statements substantively. Additionally, this block will engage students in discussion as to the nuances of MREs 801(d)(1)(B)(i)-(ii) and how judges are ruling in the field. (55 mins followed by a 5-minute transition)

**Workshop Description:** Students will break into small groups. They will be given scenarios where students play different roles: military judge, prosecutor, defense counsel. The scenarios will have fact patterns with prior statements and students will advocate for or against the admissibility of the statements, using the rule and cases previously discussed. At the end of this block, students should understand how to strategically argue for admissibility of prior statements. (60 mins)

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#### Resiliency in Practice

**Instructor:** Dr. Jennifer Steel



## STC Qualification Course Curriculum

**Course Description:** Dr. Steel will provide the students with tools and techniques to promote resiliency and mitigate against burnout. (30 mins)

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### SVU-CTC & Appellate Panel: Tips for Litigators

**Instructors:** Maj Morgan Christie, Maj David Cisek, Maj Tom Olsen, Maj Allison Gish

**Lesson Description:** Current DTOs and prior circuit litigators with appellate experience will share best practices they learned during their analysis of cases, utilizing a scenario-based discussion format. DTOs will share lessons learned from their experience on the circuit. Then appellate counsel will explain appellate lessons learned that will help spur improvements at the trial level. Instructors will also reveal tips for more efficient researching based on updates to digital research platforms. Instructors will also highlight tools for more persuasive writing by displaying samples of previously-filed motions to engage students in discussion for identifying strengths and weaknesses in the writing samples. (60 mins)