



NEW PROSECUTOR COURSE

Training Agenda (Faculty)

Presented by
Trial Counsel Assistance Program (TCAP)

RALEIGH, NC
9 DECEMBER – 13 DECEMBER, 2013

DAY 1: MONDAY, DEC 9

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| 0 8 0 0 - 0 8 1 5 | Welcome/Opening Remarks/What is TCAP? LTC Jay Morse / LTC Alex Pickands |
| | BLOCK 1 – Understanding Sex Offenders |
| 0 8 1 5 - 0 9 5 0 | Lecture: Understanding Sex Offenders Dr. Veronique Valliere <ul style="list-style-type: none"> Instructor provides a comprehensive overview of sex offenders (e.g., characteristics, myths, planning, offender patterns, etc.). Lecture will focus on society’s expectations of rapists (e.g., what they look like, and why non-stranger rapists are the most difficult to prosecute). Faculty will discuss the following: <ul style="list-style-type: none"> Cultural stereotypes about sexual violence Vulnerable populations and why sex offenders target them. How offenders rely on societal stereotypes and target vulnerable victims (e.g., “bad Soldiers” and “liars”). Recognizing different types of predatory behavior. Combating the “Good Soldier Defense.” Use of experts |
| 0 9 5 0 - 1 0 0 0 | Break |
| 1 0 0 0 - 1 1 1 5 | Lecture and Large Group Discussion Dr. Veronique Valliere <ul style="list-style-type: none"> Instructor will show an offender video and facilitate a discussion about what participants observed. Instructor will also show an offender’s drawing and facilitate a discussion about what participants learned about the offender from the drawing. Takeaways: <ul style="list-style-type: none"> Predators select victims based on their vulnerability, accessibility, and perceived lack of credibility. Many non-stranger sex offenders are serial offenders. Trial Counsel must obtain an accurate criminal history to identify other crimes and M.R.E. 404(a)&(b), 413, and 414 evidence. Trial Counsel must understand stereotypes based on culture and the interrelationship with sex offenders. Trial Counsel cannot let the Accused and his Defense Counsel use culture as an excuse. |
| 1 1 1 5 - 1 1 3 0 | Break |
| | BLOCK 2 – Victim Dynamics and Societal Expectations |
| 1 1 3 0 - 1 1 4 0 | 911 Tape Dr. Veronique Valliere and MAJ Rebecca Dimuro |
| 1 1 4 0 - 1 1 5 5 | Small Group Discussion <ul style="list-style-type: none"> Table Facilitators will fuel discussion about the tape and the participants thoughts on it as well as its potential use in court and applicable rules of evidence. If not brought up by participants, facilitators should introduce the topic of Victim Advocates, which may include a discussion on privilege and restricted/unrestricted reporting. <ul style="list-style-type: none"> Table 1: Evidentiary and overall case strengths. Table 2: Evidentiary challenges. Table 3: Immediate actions to take regarding the investigation of the case. |

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| | <ul style="list-style-type: none"> Table 4: in what ways would you use this tape in court. Would you? And how do you introduce it into evidence? Table 5: immediate actions to take regarding the investigation of the case. |
| 1 1 5 5 - 1 2 3 0 | <p>Large Group Discussion</p> <ul style="list-style-type: none"> One representative from each table should respond with the following information: <ul style="list-style-type: none"> Table 1: Strengths. Table 2: Challenges. Table 3: Actions to take regarding the investigation of the case. Table 4: In what ways could you use this tape in court. Would you? And how do you introduce it into evidence? Table 5: immediate actions to take regarding the investigation of the case. Wrap up Points: <ul style="list-style-type: none"> Even when reporting the crime the victim may be self blame or omit details due to fear or embarrassment. Consider early whether or not to use it in trial (chain of custody, authentication). If the crime occurred in a civilian jurisdiction, request the tape early. There is no substitute for hearing the account of the assault from the mouth of the victim; sworn statements and transcripts don't effectively convey the experience. |
| 1 2 3 0 - 1 3 3 0 | Lunch |
| | BLOCK 3 – Victim Dynamics and Societal Expectations |
| 1 3 3 0 - 1 4 1 5 | <p>Survivor Vignettes Dr. Veronique Valliere and MAJ Claudine Andola</p> <ul style="list-style-type: none"> Faculty will show three video clips of survivors discussing their sexual assaults and their experiences with the criminal justice system. Survivors will discuss good and bad experiences with law enforcement, prosecutors, and medical professionals. |
| 1 4 1 5 - 1 4 3 0 | <p>Small Group Discussion</p> <ul style="list-style-type: none"> Table Facilitator will lead a discussion about the reactions of participants to the vignettes. Participants should be encouraged to share positive or negative reactions of victims that they have observed in their own cases. |
| 1 4 3 0 - 1 4 4 5 | <p>Large Group Discussion</p> <ul style="list-style-type: none"> Faculty will facilitate a follow-up discussion, with each table reporting back on the discussions regarding the vignettes. Takeaways: <ul style="list-style-type: none"> Trial Counsel need to be aware that they cannot judge a victim's trauma (e.g., non-stranger vs. stranger rape). The military justice system (e.g., trial counsel) may play a crucial role in the victim's ability to cope with long and short term effects of the assault. Communication between trial counsel and the victim is key. Even if there is little to update her on. |
| 1 4 4 5 - 1 5 0 0 | Break |
| 1 5 0 0 - 1 6 1 5 | <p>Lecture: Understanding Counter-Intuitive Behavior Dr. Veronique Valliere, Ms. Bridget Ryan</p> <ul style="list-style-type: none"> Faculty will lecture on societal expectations (Counter-intuitive behavior), why they exist, and how to combat them at trial. Takeaways: <ul style="list-style-type: none"> Studies confirm that there is no predictable, appropriate, or always seen, ways in which victims respond to sexual violence. Victims form and process memory differently under stress, during trauma, or while intoxicated. |

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| | <ul style="list-style-type: none">• Victims may act “counter-intuitively” because they have not processed the event; may question if they have been “victimized” at all.• Victims may omit or even lie about certain behavior due to embarrassment or fear of punishment (e.g., drinking under age).• When interviewing or eliciting testimony from victims, counsel must use non-judgmental, open-ended questions which explain and explore counter-intuitive behavior.• Involving a Victim Advocate early in the process is critical for effective victim recovery and effective prosecution. |
| 1 6 1 5 - 1 7 0 0 | Direct Assistance by Appointment |

DAY 2: TUESDAY, DEC 10

| | BLOCK 4 – Health, Medical, and Forensic Issues |
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| 0 8 0 0 - 0 9 0 0 | <p>Lecture: Alcohol Effects and Toxicology Ms. Bridget Ryan and Dr. Jennifer Markowitz</p> <ul style="list-style-type: none"> Faculty will deliver a lecture and discuss the following: <ul style="list-style-type: none"> Victims presenting to medical personnel under the influence of alcohol, a controlled substance, illegal drugs, or a combination. Medical expert testimony related to alcohol and trauma and to corroborate substantial intoxication. The necessity or the lack thereof for a toxicology screen. Involuntary intoxication. The results of combining alcohol and over the counter/prescription drugs. Myths Blackout vs. Passout |
| 0 9 0 0 - 0 9 1 5 | <p>Large Group Discussion Ms. Bridget Ryan and faculty</p> <ul style="list-style-type: none"> Faculty will facilitate a discussion in response to the following questions: <ul style="list-style-type: none"> What are the challenges you face because PFC Myer was voluntarily intoxicated? How do you overcome those challenges to win the case? Takeaways: <ul style="list-style-type: none"> Understanding toxicology issues is critical when the victim and/or the accused is voluntarily under the influence of alcohol. Cases with intoxicated victims are often time consuming and provide unique challenges to prosecutors. Understanding blackout vs. passout is especially critical in combating 'blackout' defense with no physical evidence (consider pretrial motion). When victim presents with memory issues, consider other sources of evidence to prove/corroborate the assault. |
| 0 9 1 5 - 0 9 3 0 | Break |
| 0 9 3 0 - 1 1 1 5 | <p>Lecture: Effective Use of Medical Evidence Dr. Jennifer Markowitz</p> <ul style="list-style-type: none"> Faculty will deliver lecture and facilitate interactive discussion on the following: <ul style="list-style-type: none"> The role of the SANE/SAFE. The medical-legal examination. Interpreting physical findings and injuries for use during case investigation and trial. Evaluating and working with your expert. Impact of popular culture on the exam and evidence collection. Preparing your expert for trial testimony. |
| 1 1 1 5 - 1 1 3 0 | Break |
| 1 1 3 0 - 1 1 4 5 | <p>Presenting Medical Evidence in Court Dr. Jennifer Markowitz and Ms. Bridget Ryan</p> |
| 1 1 4 5 - 1 2 4 5 | <p>Small Group Discussion/Working Lunch</p> <ul style="list-style-type: none"> Faculty will announce the Defense has just filed a motion to preclude the medical expert from being able to testify to patient statements, claiming that because the examination is for forensic purposes, they don't fall under the medical hearsay exception. Participants will be asked to develop the following: <ul style="list-style-type: none"> Table 1: Develop qualifying questions to qualify SAFE as an expert under M.R.E. 702/703 |

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| | <ul style="list-style-type: none"> • Table 2: Develop direct examination questions for SAFE regarding examination process. • Table 3: Develop direct examination questions for SAFE regarding the findings of the examination. • Table 4 & 5: Develop foundation questions IOT allow SAFE to testify to the victim's statements under the medical hearsay exception M.R.E. 803(4). |
| 1 2 4 5 - 1 3 3 0 | <p>Large Group Discussion and Demonstration</p> <ul style="list-style-type: none"> • Faculty will facilitate a large group discussion of the hearing on the defense's motion. Faculty will lead each table through the direct of the SAFE based on the above table assignments. |
| 1 3 3 0 - 1 3 4 5 | <p>Break</p> |
| 1 3 4 5 - 1 4 4 5 | <p>Lecture: Strangulation and Injury in Sex Assault Cases Ms. Bridget Ryan</p> <ul style="list-style-type: none"> • Faculty will deliver lecture and facilitate discussion on strangulation as a mechanism of injury in sexual assaults. The lecture will discuss the signs and symptoms victims may display following a strangulation event and discuss common misconceptions about strangulation injury. Faculty will also discuss lethality-related issues with respect to strangulation, including delayed fatalities from strangulation events and military protective orders. • Takeaways: <ul style="list-style-type: none"> • Trial Counsel will better understand the signs and symptoms of strangulation as it relates to proving the assault, when no visible external injury is present. • When strangulation is a component of the sexual violence, trial counsel should counsel the command on Military Protective Orders and the consideration of Pretrial Confinement, due to the increased lethality risk. • Working with experts to explain the seriousness of strangulation as a component of sexual violence to the fact finder is imperative, especially if little/no visible physical injury exists. |
| 1 4 4 5 - 1 5 0 0 | <p>Break</p> |
| | <p>BLOCK 5 – Working with CID in Sexual Assault Prosecution/Investigation</p> |
| 1 5 0 0 - 1 5 1 5 | <p>Large Group Discussion MAJ Rebecca Dimuro / MAJ Daniel Murphy</p> <ul style="list-style-type: none"> • Facilitators will ask participants to identify potential challenges to prosecuting the <u>Jones</u> case after they tell participants that the victim in the case is reluctant to continue with the case and she is scheduled to meet with the TC tomorrow. |
| 1 5 1 5 - 1 5 3 5 | <p>Small Group Discussion</p> <ul style="list-style-type: none"> • Facilitator will moderate small group discussion on the following: <ul style="list-style-type: none"> • What information or source(s) of information could you, obtain or identify that might assist in the investigation and prosecution of this case? • Why is the information you have identified relevant to this case? • If not in your possession where and/or how do you obtain it? • What information or source(s) of information do you have access to that may be helpful in supporting the victim in this case? |
| 1 5 3 5 - 1 6 1 5 | <p>Large Group Discussion MAJ Rebecca Dimuro / MAJ Daniel Murphy</p> <ul style="list-style-type: none"> • Table facilitators should ask a representative to discuss the sources of information identified in small groups. The group facilitator should also ask the representative to identify one (1) source of information and explain what information they would expect to receive from that source. As participants identify a particular source of information, group facilitator will select the hyperlink on the PowerPoint slide that corresponds to the identified source. A list of all twelve (12) sources as well as the information provided by each source is included on the slide(s). The Group facilitator and the Table facilitators will be provided a 'cheat sheet' indicating the hyperlinks that connect to the particular sources of information. If participants identify a source |

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| | <p>that is unavailable, group facilitator will indicate that it is unavailable. After each group identifies one (1) source of information, group facilitator will ask the large group what other information, outside their particular discipline would be useful in working with the victim and to assist in the investigation and prosecution. At the end of the discussion, group facilitator will draw out and/or reveal any additional information participants did not request and ask for a show of hands to indicate whether the information would have made a difference in the charging decisions. Table facilitators should reinforce to participants that all ideas are good but we don't have all information requested... just like a real case.</p> |
| 1 6 1 5 - 1 6 3 0 | Break |
| 1 6 3 0 - 1 7 3 0 | <p>Lecture MAJ Rebecca Dimuro / MAJ Daniel Murphy</p> <ul style="list-style-type: none"> • Faculty will deliver a mini-lecture on the relevance and the importance of thorough investigations, collaboration, multidisciplinary team building, and identifying all potential sources of information, corroborating a victim's story, assisting the panel in evaluating the victim's credibility, and offender focused case presentation. • Takeaways: <ul style="list-style-type: none"> • Criminal justice professionals should identify all sources of relevant information and evidence when investigating a case. |
| 1 7 3 0 - 1 8 3 0 | Direct Assistance by Appointment |

DAY 3: WEDNESDAY, DEC 11

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| 0 9 0 0 - 1 0 0 0 | <p>Expert Panel Ms. Bridget Ryan and faculty</p> <ul style="list-style-type: none"> A panel consisting of SVPs and HQEs will address the most effective use of expert witnesses. Each panel member will focus on one of the most common types of experts used in special victim cases. The panel will discuss: 1) who can be qualified as an expert; 2) what subject that particular expert can testify to; 3) when and how they can assist in the government's case, and; 4) whether to use the expert as a consultant, witness, or both. Additionally, for each expert, the primary discussion facilitator will address topics such as how to seek out and choose experts, how best to interact with experts pretrial, and ways to make the expert's testimony most effective. Topics will include handling defense requests for experts and pit falls with managing defense expert testimony. Areas of expert testimony will include the following: <ul style="list-style-type: none"> Victim Behavior Expert (Sexual Assault) Toxicologist (Blackout/Pass-out Expert) Mental Health Experts (706/Mental Responsibility Defenses) Sexual Assault Dangerousness and Recidivism Experts False Confession Experts |
| 1 0 0 0 - 1 0 1 5 | <p>Break</p> |
| <p>BLOCK 6 – Developing Offender-Focused Themes and Theories</p> | |
| 1 0 1 5 - 1 0 4 5 | <p>Mini-Lecture Ms. Bridget Ryan and MAJ Daniel Murphy</p> <ul style="list-style-type: none"> Faculty will deliver a lecture on the importance of the development and use of themes in sex assault cases. Faculty will provide examples of incorporating a theme throughout trial, from voir dire to sentencing argument. |
| 1 0 4 5 - 1 1 0 0 | <p>Small Group Discussion</p> <ul style="list-style-type: none"> Each table will be assigned a different fact pattern. Tables will review their fact pattern and develop an offender-focused theme for use at trial and a plan for weaving it into a specified trial component (e.g., cross, opening, etc...). Facilitators will oversee theme development and distinguish between effective use of them v. theory. <ul style="list-style-type: none"> Table 1 will refer to Appendix 1 and Opening Table 2 will refer to Appendix 2 and Direct of the Victim Table 3 will refer to Appendix 3 and Cross of Accused Table 4 will refer to Appendix 4 and Closing Table 5 will refer to Appendix 5 and voir dire |
| 1 1 0 0 - 1 1 1 5 | <p>Large Group Discussion Ms. Bridget Ryan and MAJ Daniel Murphy</p> <ul style="list-style-type: none"> Participants will be asked to select one reporter from the group. He/she will deliver a brief synopsis of their fact pattern and explain their theme and how they would use it at trial. Takeaways: <ul style="list-style-type: none"> Offender-focused theme can be used to overcome rape myths and the proper use of a theme can incorporate perceived weaknesses and turn them into strengths. Themes must be used throughout the entire case and not just in the opening and closing. Direct and Cross examinations can develop and reemphasize theme. |
| 1 1 1 5 - 1 1 3 0 | <p>Break</p> |
| 1 1 3 0 - 1 2 1 0 | <p>Lecture: Presenting the Government's Case-in-Chief MAJ Daniel Murphy</p> <ul style="list-style-type: none"> Instructor will give an overview of the components necessary to prove a sexual assault using an offender-focused approach. |

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| 1 2 1 0 - 1 2 3 0 | Demonstration: Effective use of SAFE / SANE fungible and non-fungible evidence MAJ Claudine Andola |
| 1 2 3 0 - 1 3 3 0 | Lunch |
| New Prosecutor Course | |
| 1 3 3 0 - 1 4 2 0 | Understanding Preferrals, Transmittals, Referrals, Speedy Trial and Advising Commanders CPT Jordan Stapley |
| 1 4 2 0 - 1 4 3 0 | Break |
| 1 4 3 0 - 1 5 2 0 | Charging Decisions CPT Benjamin Hillner |
| 1 5 2 0 - 1 5 3 0 | Break |
| 1 5 3 0 - 1 6 2 0 | Article 32s CPT Kate Tagert |
| 1 6 3 0 - 1 7 3 0 | Direct Assistance by Appointment |

DAY 4: THURSDAY, DEC 12

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| 0 9 0 0 - 0 9 5 0 | The Defense Counsel Perspective CPT Benjamin Hillner |
| 0 9 5 0 - 1 0 0 0 | Break |
| 1 0 0 0 - 1 0 5 0 | Pretrial Agreements and Negotiation CPT Benjamin Hillner |
| 1 0 5 0 - 1 1 0 0 | Break |
| 1 1 0 0 - 1 1 5 0 | Stipulations of Fact CPT Benjamin Hillner |
| 1 1 5 0 - 1 3 0 0 | Lunch |
| 1 3 0 0 - 1 3 5 0 | Charging a Drug Case CPT Amy Teeples |
| 1 3 5 0 - 1 4 0 0 | Break |
| 1 4 0 0 - 1 4 5 0 | Understanding Discovery CPT Benjamin Hillner |
| 1 4 5 0 - 1 5 0 0 | Break |
| 1 5 0 0 - 1 5 5 0 | Offensive Motions CPT Janae Lepir |
| 1 5 5 0 - 1 6 0 0 | Break |
| 1 6 0 0 - 1 6 5 0 | Understanding Foundations CPT Janae Lepir |
| 1 6 5 0 - 1 8 0 0 | Direct Assistance by Appointment |

DAY 5: FRIDAY, DEC 13

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| 0 9 0 0 - 0 9 5 0 | Administrative Separations CPT Brad Dixon |
| 0 9 5 0 - 1 0 0 0 | Break |
| 1 0 0 0 - 1 0 5 0 | Use of Experts CPT Faith Coutier |
| 1 0 5 0 - 1 1 0 0 | Break |
| 1 1 0 0 - 1 1 5 0 | Child Pornography CPT Faith Coutier |
| 1 1 5 0 - 1 3 0 0 | Lunch |
| 1 3 0 0 - 1 3 5 0 | Article 120 CPT Brad Dixon / CPT Faith Coutier |
| 1 3 5 0 - 1 4 0 0 | Break |
| 1 4 0 0 - 1 4 5 0 | Sentencing CPT Jordan Stapley |
| 1 4 5 0 - 1 5 0 0 | Break |
| 1 5 0 0 - 1 5 5 0 | Sentencing CPT Jordan Stapley |
| 1 5 5 5 - U T C | Closing Remarks and Adjournment |