

LTC Jay Morse Written Statement to RSP

I am Lieutenant Colonel Jay Morse, and I am the Chief of the Army's Trial Counsel Assistance Program, or TCAP, based at Fort Belvoir, Virginia. As the Chief of TCAP, I supervise six Judge Advocate training officers and two Highly Qualified Experts, both of whom are civilian career prosecutors with more than thirty years' experience between them. Our office provides recurring training, indirect and direct assistance to all the Army's prosecutors at installations around the world. Additionally, I supervise the Army's 23 Special Victim Prosecutors, experienced Judge Advocates who focus specifically on prosecuting cases of sexual assault, domestic violence, and where children are victims.

My written statement will expand on four topics: 1) how we train our prosecutors, or "Trial Counsel"; 2) the Special Victim Prosecutor Program; 3) the development of complex cases; and 4) the challenges we face with these cases and how we overcome them.

Training Trial Counsel

While the Judge Advocate Officer Basic Course in Charlottesville, Virginia provides instruction in basic military justice to all new Judge Advocates, TCAP provides focused instruction once a Judge Advocate is appointed as a prosecutor, or "Trial Counsel." Within the first six months of assuming duties as a prosecutor, a Judge Advocate must attend our five-day New Prosecutor Course/Essential Strategies for Sexual Assault Prosecution. The course dedicates two and a half days of instruction on basic prosecutorial skills and two and a half days to in-depth instruction on the nuances of prosecuting sexual assault.

TCAP provides continued assistance to prosecutors throughout their tenures as Trial Counsel in the form of a 24-hour a day "help line"; diverse training opportunities throughout the year on topics such as forensic interviewing of child victims, use of experts, prosecuting complex cases, and advanced advocacy; outreaches to installations where we provide in-depth, personalized training on specific cases and other individual needs of the trial counsel; and direct assistance in complex cases where requested by local Staff Judge Advocates.

Our training is routinely updated to reflect current trends and case law, is nested with instruction provided by the Legal Center and School, and augmented by experts from the civilian community to ensure we are following best practices from state and federal practitioners. It is designed to continue to build on both the experience of the individual attorney and the expertise found throughout the Army JAG Corps in a coordinated effort to build expert military justice practitioners who can later fill roles as defense counsel, supervisory military justice positions, military judges, and Deputy Staff Judge Advocates and Staff Judge Advocates.

The Special Victim Prosecutor Program

In addition to supervising the six attorneys at TCAP, I supervise our 23 Special Victim Prosecutors, or SVPs. Special Victim Prosecutors are experienced, hand-selected litigators who focus exclusively on prosecuting those cases involving Special Victims – again, victims of sexual assault, domestic violence, and where children are victims. Special Victim Prosecutors are assigned for a three-year tour as opposed to the more common two-year tour of a Judge Advocate, and an SVP typically has prior experience as both a prosecutor and a defense attorney. They are selected at Department of the Army level by our Personnel, Plans and Training Office and in conjunction with the Chief of the Trial Counsel Assistance Program.

The Army's SVP program has been in place since 2009, and our 23 SVPs are currently located at 21 installations around the world. Though they have "regional" jurisdiction, in that they may provide coverage to more than one installation, the Judge Advocate General has given me the authority to allocate these assets where they are needed most. The result is that I can shift a particularly able prosecutor to assist on a case outside of his or her region, or send a prosecutor with a lighter caseload to assist in a busier jurisdiction.

As directed by The Judge Advocate General, a Special Victim Prosecutor's primary mission is to develop and litigate special victim cases, with the secondary mission to assist in the development of a sexual assault and family violence training program both for investigators and trial counsel. This is done with the support of the local commander, and the actual training involves commanders and supervisors at all levels, in addition to health providers and victim-assistance professionals.

Though litigation experience is essential in assessing new SVPs, it is crucial to ensure that these officers have significant interpersonal skills in addition to expertise in military justice. To be ultimately successful, an SVP must be able to expertly train and mentor a young attorney, direct investigators, coordinate victim care with Victim Advocates, Victim Counsel, and Victim-witness liaisons, advise Staff Judge Advocates, work with Chiefs of Military Justice, be an accomplished advocate both inside and outside the courtroom, prepare for court-martial, and most importantly, dedicate the time and resources necessary to develop a trusting relationship with a victim. If I can convey anything to the panel this afternoon, it is this: The Special Victim Prosecutor position is a profoundly tasking and demanding job that tasks all the physical, emotional, and intellectual capacities of those assigned as an SVP. I know of no job more difficult in the Judge Advocate General's Corps.

Special Victim Prosecutor training is personally managed by me as the Chief of the Trial Counsel Assistance Program, and coordinated with the Chiefs of our Government Appellate Division and the Criminal Law Division of the Office of The Judge Advocate General. Within the first six months of assuming duties as an SVP, the Judge Advocate will spend two weeks in on-the-job training with a civilian Special Victim Unit; attend a two-week Sexual Assault Trial Advocacy Course; attend a three-day training event with existing Special Victim Prosecutors; and attend a five-day course for our junior prosecutors, which focuses both on basic prosecutorial skills and Essential Skills for Prosecuting Sexual Assault. Additionally, they may attend the Career Prosecutor Course run by the National District Attorney's Association, and will attend recurring training (both civilian and military) throughout their tenure.

The Development of Complex Cases

Though there is not a specific definition as to what makes a case "complex," I am comfortable saying that almost every Special Victim case is an extremely difficult case to prosecute and fits squarely within any definition of the term.

The majority of our sexual assault offenses include both young offenders and young victims, both of whom are junior in rank. The offender and victim typically know one another, and may even have a pre-existing sexual relationship. It is not uncommon, in fact, to have a victim and

offender to have engaged in both pre-offense and post-offense consensual sexual contact. Alcohol is routinely involved, and victims are frequently reluctant to report – not because of a fear of reprisal from the command, or that their commander won't take action, but out of a concern for their loss of privacy and, I believe, how reporting a sexual assault will affect that victim's ability to interact with his or her peers on a "normal" basis.

The frequent demographic comparison is that of a university, and it is important to understand the similar social dynamic at play in many of our cases. Typically, the victim, offender, and witnesses know one another and work together. Because of delayed reporting, there is quite often limited or no physical evidence – clothes and bedding are washed, memories are clouded, and time has eliminated the possibility of blood or urine samples. As such, the pivotal issue at trial can be distilled down to simply whether or not the victim consented to the sexual event.

This is the simple description of a sexual assault in the Army, and it is easy to see why many civilian jurisdictions choose to not dedicate their stretched resources towards prosecuting cases like these. Anecdotally, nearly every SVP has prosecuted a sexual assault case where civilian prosecutors and law enforcement have refused; many of them successfully secure convictions.

The key difference between a civilian jurisdiction and the U.S. Army is the role of the commander, no comparison for which exists in any civilian jurisdiction. The commander is statutorily responsible for good order and discipline within his or her ranks, and can therefore dedicate the significant resources required to successfully prosecute these difficult cases. And though these types of cases can be simply summed up as a "consent" issue, the reality is something far more nuanced and complex. With a commander's emphasis and the expertise of our Special Victim Capability, we have developed a coordinated plan to prosecute these complex cases.

Challenges We Face & How We Overcome Them

Our approach is multi-disciplinary, and I will touch briefly on the Special Victim Prosecutor's relationship with the Criminal Investigative Division; victim-care professionals; the Trial

Counsel Assistance Program and our Highly Qualified Experts; and other Special Victim Prosecutors.

First, each Special Victim Prosecutor has a close working relationship with their local Sexual Assault Investigator or the equivalent, and in some cases they actually share office space. As per The Judge Advocate General's guidance, each local Staff Judge Advocate must immediately inform the SVP of any allegation involving a special victim. The result is a direct line of communication between detectives and prosecutors. Additionally, this summer saw the first time we have placed a former SVP – a highly qualified Lieutenant Colonel – directly at the Criminal Investigative Division School in Fort Leonard Wood, Missouri. Our goal is to continue to develop and coordinate the global prosecution and investigative effort.

Second, each SVP has a close working relationship with local victim-care professionals. The SVPs initial meeting with any victim is designed to be an introduction to the resources available to him or her, and to ensure the victim understands the process itself. The end result is, hopefully, a victim who is emotionally prepared for the court-martial process with an identifiable, reliable and professional support group.

Third, each SVP has a close relationship with TCAP, to include our Highly Qualified Experts. Last year, both of our HQEs spent approximately 80% of the calendar year in “temporary duty” status, meaning they were constantly on the road in support of SVPs at specific installations, assisting on specific cases, and frequently meeting personally with victims.

Fourth, the SVPs communicate with each other on a daily basis. By using a common website, each SVP shares “lessons learned” and “best practices” after each court-martial; they share successful motions and tactics both in preparation for and at trial; they recommend experts for use in cases with similar issues; and post questions and other requests for assistance. The end result is a wealth of experience and expertise that is quickly disseminated across the JAG Corps.

Lastly, The Judge Advocate General has recently directed the implementation of 23 Special Victim Non-commissioned officers, each of whom is an experienced enlisted paralegal who will

be co-located with and dedicated to each Special Victim Prosecutor. These paralegals are undergoing their initial training as we speak at Fort Belvoir, Virginia, where my office is training them on topics as varied as the use of technology in case management to how to interview victims.

Summary

Preventing sexual assault and domestic violence and prosecuting these complex crimes, whether they occur in the civilian or in the military community, is a difficult task requiring time, resources and expertise, but the SVP program has proven to be a significant step towards success. I am grateful for this opportunity to share with you how immensely proud I am of the work of TCAP and the SVP program, and am available to answer any questions.