

## Interim Training Guidance

During the most recent Military Justice Leaders Course (MJLC), we had some great discussions regarding training. One of the common themes was that each office conducts training differently based on caseload, experience, size, etc. While not all training programs will look alike, we wanted to offer some tips in lieu of the cancellation of the Fall 2020 ITAC.

The Advocacy Trainer is an excellent training tool and starting point for your office's training program. It offers twelve 90-minute training plans, as well as thirty-six 60-90-minute training plans. We also highly recommend using the corresponding videos to show what "right" looks like. You can access the Advocacy Trainer through JAGCNET by clicking "Legal Functions" on the homepage, then "Criminal Law Site" under "Military Justice." Finally, click "Document Library" and you will see "The 2019 Advocacy Trainer" and "The 2018 Advocacy Trainer." The 2018 version is a zip file that contains the videos. Most offices prefer to use real cases, rather than mock fact patterns, but you can still incorporate some of the drills discussed in the Trainer with your actual cases.

### Here are some general tips for effective training:

1. Use the real courtroom as often as possible.
2. Develop and stick to a regularly scheduled battle rhythm to maximize participation and manage expectations.
3. Combine your General Crimes and Special Victims Crimes teams and defense teams as much as possible.
4. Leverage expert training when DoD experts are at your installation for other cases. Many experts are happy to give a class once they are done testifying.
5. Force advocates not to rely on notes. Take the paper or computer away before openings/closing arguments. Instead, encourage them to use bullet points, rather than individual questions on direct and cross.
6. Force them out of their comfort zone. Encourage them to try to new things. Ultimately, they may go back to their tried and true methods for trial, but they won't grow as advocates unless they are encouraged (and given the freedom) to try different techniques/methods.
7. Encourage counsel-led training: This works best after the advocate dealt with a particular issue at trial (perhaps crossing an expert or an issue with prior consistent statements). Have one of the counsel give a class on the rules and what they learned. Advocates may dread the "extra work" this entails, but acknowledge this is a great learning tool and way to capture lessons-learned.

### Some other specific tips for your training:

1. Theme/Theory Development: In a group setting (military justice advisors, general crimes, and special crimes advocates), have your counsel brief their cases pointing out the three best and worst facts of their case, the key witnesses, etc. Once complete, have everyone in the room develop their own theme and theory for the case to spur the creative process.
2. Voir Dire: A common complaint from counsel is that voir dire training is generally a waste of time because based on past experience, judges do not allow counsel much freedom in this area. Some judges may be reluctant to give advocates more freedom because based on *their* past experience, judge advocates do not perform well when given more latitude. If we properly train our advocates in

this area and convey to judges that they should be given the opportunity, judges will be more likely to grant them more leeway.

An effective drill for voir dire is to ask open ended questions during group voir dire.

Below is an example of a Defense counsel addressing the accused's right to remain silent during voir dire:

*In group voir dire, ask this simple question: "What is the first thing that comes to your mind when you hear that the accused will not testify?"*

*Wait a few moments. There may be some silence. Eventually, someone will say, "He is guilty." Now, don't rush to challenge that person. Instead, say, "Thank you, panel member." And then ask, "Did anyone else think that?"*

*Continue asking questions until all the reasons are laid out.*

*Do not be judgmental with the answers. Instead, validate them. Say, "Thank you, panel member, I see your point" or variations on that.*

*Then, ask, "Okay, why would someone who is innocent not take the stand?" Again, wait a few moments. There may be some silence. But then somebody may offer: "He might not be a good public speaker"; "His attorney might have told him not to"; "He might be afraid that a trained federal prosecutor will twist his words"; "He might be really nervous, particularly when this much is at stake." If no one comes up with a reason after several moments have gone by, then give them some reasons to get the ball rolling.*

*The key is to have them list all of the reasons why someone would not want to testify. Then ask, "Does everyone now see why the military judge told you not to hold it against SGT Adams if he doesn't testify? Please raise your hand if you can see that. Everyone raised their hand. Thank you."*

3. Opening/Closing: In the smart phone era, video recording is easy and accessible. We highly recommend recording mock openings and closing arguments. Have other advocates sit in the panel box and set up the recording device to reflect their vantage point. This will give the student the panel's point of view, which is vital for evaluating volume of voice, eye contact, visibility of exhibits, etc.
4. Direct/Cross: Too often advocates practice directs and crosses with perfect scripts (no inconsistencies from sworn statements). Assign an advocate who is not on the case to read the witness' sworn statement and play the role of that witness on direct. Tell that advocate to change some details on direct; for example, have the witness forget certain details or have them change something about their statement. Obviously, don't tell the advocate performing the direct these changes are coming. This is a great way to train advocates on refreshing recollection, impeachment, etc. Often times, we hear TCs and DCs are immensely prepared but have trouble going off script. This is a great drill to test their knowledge of the MREs and ability to think on their feet.

5. Foundations: Ensure the students understand and know the proper foundational questions (the Military Evidentiary Foundations guide is a great resource), but encourage them to use a more conversational tone when admitting evidence. Encourage the other advocates to make objections.
6. Critiquing Advice: Before training, know the facts of the case as best as possible. Take verbatim notes as the counsel is conducting a drill. Be specific in your critique. Stay away from general comments, like “good job.” Do not sugarcoat. Advocates need honest feedback rather than feel-good comments in order to improve. Show them what right looks like, whether that is through live demonstrations by you or by playing a video in The Advocacy Trainer. Remember, there is no one way to be a great advocate, so allow for different styles.

**Additional Resources:**

Mastering Trial Advocacy, Charles H. Rose III

Compendium of Trial Advocacy Drills, Robert Stein, Ben Rubinowitz

Trial Technique, Predicate Questions, NDAA

Military Evidentiary Foundations (Sixth Ed.), David A. Schleuter, et.al.