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A Corps-Wide Strategic Approach to Combating Vicarious Trauma



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Mitigating vicarious trauma requires a comprehensive strategic plan that calls for the JAG Corps to develop and implement policies and initiatives to identify and mitigate vicarious trauma and its effect on Department of the Air Force military judges, litigators, and paralegals.

Department of the Air Force military judges, litigators, and the paralegals who assist in the investigation and prosecution of serious crimes are often exposed to shocking and horrific details of criminal misconduct. Among these are witness testimony and gruesome photographic and video evidence related to rape and other sexual assaults, child abuse, domestic violence, child pornography, and various acts of violence. Repeated exposure to such evidence and the trauma suffered by others can lead to feelings of guilt, dreams or recollections of the event, increased alcohol and substance consumption, disturbed sleep and increased irritability, loss of faith in humanity, and hypervigilance.^[1] All of these are symptoms commonly associated with vicarious trauma, a form of post-traumatic stress disorder (PTSD).^[2]

Over the last two decades, significant resources—funds, personnel, and training—have been devoted to improving the Department of Defense’s (DoD) efforts to enhance sexual assault prevention and response, victim protection and support, and military justice investigative and judicial processes. Eradicating sexual assault from our ranks remains the focus. However, reforms aimed at curtailing the psychological impact of repeated and secondhand exposure to trauma on advocates and advisors, as well as investigators, prosecutors, defense attorneys, victims’ counsel, and members of the judiciary, remain a mere afterthought. If such efforts are not prioritized, the DoD runs the risk that its support team personnel and trial participants will develop vicarious trauma, which, in turn, will negatively

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impact the quality of care crime victims receive, the quality of representation and advocacy, and the objectivity of judges in military courtrooms.

This article first examines the impact of secondhand exposure to traumatic events on trial participants' mental health in certain types of cases and discusses nationwide efforts to combat vicarious trauma. This article advocates for mitigating vicarious trauma through a comprehensive strategic plan that calls for The Department of the Air Force's Judge Advocate General's Corps (JAG Corps) to (1) employ a supervisory licensed mental health professional and embed at least one licensed mental health professional within each of the five litigation circuits, (2) enhance and standardize education and training in vicarious trauma for trial participants and supervisors, and (3) implement psychological assessments at various stages of a military judge, litigator, and paralegal's assignment in litigation-centered roles.

Nationwide recognition that PTSD is no longer a mental health condition ascribed exclusively to combat veterans and that trauma could be experienced through indirect and secondhand exposure.

UNDERSTANDING VICARIOUS TRAUMA AND ITS ROLE IN MILITARY JUSTICE

In 2013, as the Air Force launched the DoD's first Special Victims Counsel Program, the American Psychiatric Association (APA) revised the PTSD diagnostic criteria set forth in the Fifth Edition of its Diagnostic and Statistical Manual of Mental Disorders (DSM-5). The APA included "sexual violence" within the core premise of trauma and added "repeated or extreme indirect exposure to aversive details of a traumatic event" as a qualifying stressor to meet criteria for diagnosis of PTSD.[3] Although decades of research have shown that 15 to 20 percent of trauma counselors and psychotherapists develop PTSD from hearing

and sharing stories of their clients who survived such abuse,[4] the inclusion of repeated or indirect exposure to traumatic events as a form of PTSD signaled a nationwide recognition that PTSD is no longer a mental health condition ascribed exclusively to combat veterans and that trauma could be experienced through indirect and secondhand exposure.[5] This inclusion signaled that, in addition to directly experiencing a traumatic event such as sexual violence, witnessing it as it occurred to another, learning it occurred to a close family member or friend, or repeated exposure to its aversive details may result in vicarious trauma, which, if unaddressed, may lead to PTSD.[6]

Just as individuals respond to trauma differently, the symptoms of vicarious trauma will differ from person to person. "Responses may be negative, neutral, or positive; can change over time; and can vary from individual to individual, particularly with prolonged exposure." [7] Symptoms, if and when experienced, will fall into five major categories—emotional, behavioral, physiological, cognitive, and spiritual.[8] Individuals experiencing vicarious trauma may become irritable, angry, cynical or negative, experience changes in mood or sense of humor, isolate or feel disconnected from others, increase alcohol or substance consumption, find it difficult to separate work and personal life, experience difficulty sleeping or other negative effects on their physical well-being, and/or find it difficult to stop thinking about the trauma experienced by another, even when not at work.[9]

When speaking of vicarious trauma, many mental health professionals will cite as examples first responders collecting human remains and police officers exposed to details of child abuse.[10] The practice of law, notably military justice, may result in repeat and/or extreme indirect exposure to aversive details of traumatic events experienced by others.

- **Victims' Counsel (VCs) and Victims' Paralegals (VPs)** work daily with child and adult survivors of trauma who, during the investigation and prosecution of their alleged offender, repeatedly relay their traumatic experiences to others. In order to provide zealous and competent

representation, SVCs and SVPs accompany their clients to interviews with investigators, prosecutors, defense counsel, and may sit through a court-martial where their clients again relay the trauma to a military judge and/or panel members.

The practice of law, may result in repeat and/or extreme indirect exposure to aversive details of traumatic events experienced by others.

- **Circuit Defense Counsels (CDCs), Area Defense Counsels (ADCs), and Defense Paralegals (DPs)** represent clients accused of criminal misconduct ranging from minor offenses to felony-level crimes. To provide zealous and competent representation, CDCs, ADCs, and DPs will review evidence to include witness statements and photographic and video evidence, and participate in victim and witness pretrial interviews during which victims relay accounts of trauma to them. Their clients may disclose to them gruesome details of their criminal misconduct. As professional responsibility rules preclude CDCs, ADCs, and DPs from disclosing confidential client communications, these attorneys guard the information learned in the course of their representation, often at the expense of their own mental and emotional well-being. Despite the repeated exposure to the trauma endured by others and/or inflicted by their clients, CDCs, ADCs, and DPs reserve judgment of their clients and their alleged wrongdoings to provide effective and zealous client representation, in and out of court.
- **Military Judges**, day in and day out, preside over pretrial motions as well as criminal trials. In some cases, the judge also acts as the trier-of-fact, weighing the evidence presented and deciding the fate of the alleged offender, knowing their high-stake decisions will have a lifelong impact on the accused and their family members and are often irreversible. Given the nature of cases tried in military courtrooms, it is likely most

military judges will preside over cases involving sexual assault, aggravated assault, assault, child abuse, child sexual assault, and child pornography. Military judges presiding over courts-martial for these offenses must review evidence (written, oral, and photographic) to rule on their admissibility through pretrial motions and, at trial, must suppress their emotions and natural facial expressions to avoid improperly influencing the court.

- **Circuit Trial Counsels (CTCs)** travel across the world, prosecuting the most serious offenses including domestic violence, sexual assault, aggravated assault, and child abuse. CTCs advise criminal investigators through all aspects of a criminal investigation and mentor junior litigators through pretrial preparation and prosecution of these offenses. Due to the nature of their job, especially for CTCs in the Special Victims Unit, these litigators are repeatedly and indirectly exposed to the trauma suffered by others through witness interviews, case file review, examination of photographic and video evidence, and trial testimonies.
- **Assistant Staff Judge Advocates and Case Paralegals** assigned to installation-level legal offices advise law enforcement officials through all aspects of a criminal investigation, conduct victim and witness interviews in preparation for trial or alternative disposition of criminal misconduct, and review voluminous investigative files for offenses such as sexual assault. These attorneys and case paralegals are often the Department of the Air Force's newest Airmen and Guardians, enlisted and officers, and are yet, just months, weeks, or even days after technical training, tasked with this grave responsibility. Some of these attorneys and paralegals may silently shoulder their own unresolved trauma, while simultaneously acclimating to military service.

Similar to police officers, military judges, litigators, and paralegals are at an increased risk of experiencing the psychological effects of vicarious trauma as a result of continuous exposure to traumatic materials and repeatedly hearing victims' stories. At the conclusion of the above

litigation assignments, military judges, litigators, and paralegals proceed to their next assignment without undergoing an evaluation or counseling regarding the psychological impact of their litigation experiences.

COMPARATIVE ANALYSIS – BEST PRACTICES

The American Bar Association noted that attorneys who practice criminal law may be susceptible to compassion fatigue or vicarious trauma “as they are regularly exposed to human-induced trauma, and are called on to empathetically listen to victims’ stories, read reports and descriptions of traumatic events, view crime scenes, and view graphic evidence of traumatic victimization.”^[11] Another study found judges and court staff may also be at risk and susceptible to vicarious trauma “due to the combination of working in a busy court, hearing repeated accounts of harrowing or traumatic events, and worrying about safety issues that may arise around volatile or emotionally charged cases.”^[12] A study by the National Judicial College on judges suffering from secondary and vicarious trauma from in-court experiences revealed that 63 percent of judges reported symptoms of work-related vicarious trauma.^[13]

Understanding the impact of repeated exposure to trauma as a result of criminal litigation, judicial systems across the United States and in other countries, have begun to establish policies and legislation to combat vicarious trauma. For example, the United States Department of Justice Office of Victims of Crimes developed a Vicarious Trauma Toolkit containing over 500 resources to help litigators, supervisors, and employers to further understand vicarious trauma, its prevalence and risk factors, and its impact on those working in various helping professions.^[14] Furthermore, following the trial of the Boston Marathon bomber where jurors imposed the death penalty after weeks of graphic testimony and photographic evidence of lives and bodies destroyed, the judge presiding over the case extended jury service by 90 days to permit jurors to receive free counseling through its Federal Employee Assistance Program.^[15] In the United States, federal judges may extend a juror’s service to enable them to take advantage of cost-free, voluntary, and confidential counseling services through the Federal Employee Assistance Program.^[16] In

Canada, since January 2017, jurors who complete jury duty on a criminal trial, civil trial, or a coroner’s inquest may receive free, confidential, and professional counseling through the Juror Support Program.^[17]

STRATEGIC PLAN OF ACTION

It is imperative that the Department of the Air Force prepares its military judges, litigators, paralegals, and those who lead them with the tools to manage, and when necessary, overcome the emotional, mental, and psychological impact of litigation. Becoming a trauma-informed organization requires a comprehensive strategic plan. Specifically, the JAG Corps should (1) employ a supervisory licensed mental health professional and embed at least one licensed mental health professional within each of the five litigation circuits, (2) enhance and standardize education and training in vicarious trauma for trial participants and those who lead them, and (3) implement psychological assessments at various stages for those in litigation-centered roles.

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Employ and Embed Licensed Mental Health Professionals

The JAG Corps is currently comprised of five litigation circuits located around the world. Oversight of the military judges, litigators, and paralegals in each circuit is managed by the Chief Trial Judge, Chief Prosecutor, Chief Defense Counsel, and Chief Victims’ Counsel. In addition, the JAG Corps has experienced personnel overseeing a Circuit Counsel Assistance Program, Defense Counsel Assistance Program, and the Victims’ Counsel Assistance Program. To date, the JAG Corps does not have embedded licensed mental health providers who provide holistic individual and population-focused mental health care, support, treatment,

training, and resources for its judges, litigators, and paralegals. This responsibility continues to rest with each installation's mental health clinics and external support resources.

The concept of embedded behavioral and mental health is not new to the DoD. The United States Army assigns behavioral health providers to operational units, a practice that has led to an increase in visits to behavioral health.^[18] The United States Navy reported in 2018 that 25 percent of its mental health workforce are embedded in operational units.^[19] In 2018, the Air Force beta tested Task Force True North, a resiliency initiative that embedded mental health professionals within high-risk groups.^[20] These initiatives and best practices exist so military members can receive expedited access to care and community-level treatment from a single provider in an effort to improve continuity of care, erode the stigma commonly associated with mental health care in the military, and allow providers to specifically tailor treatment options for unit members to a much greater degree.^[21]

Given the nature of litigation in the Department of the Air Force, the types of cases which litigants are exposed to, and the travel associated with these positions, the JAG Corps must take steps to ensure timely and easily accessible care for these practitioners who may otherwise be unwilling to reach out to their installation's mental health clinic. One such action would be to embed a licensed mental health clinician in each of its five litigation circuits under the oversight of a supervisory licensed mental health professional.

Vicarious trauma should be taught at all foundational military justice courses.

“Sustained presence [of a mental health professional] over time allows Airmen, and their families, to work towards the conclusion that the unit caregiver is indeed a trusted resource.”^[22] Embedded mental health professionals who get to know the military judges, litigators, and paralegals in their circuit and who, over time, better understand the nature of

the work they do in executing their judicial and litigation functions, will develop stronger relationships and personal connections. This familiarity will aid in ensuring timely access to care, foster trust, increase ease of access, and assist providers in developing tailored treatment specific to the members' needs and challenges. Circuit-level management of mental health care for military judges, litigators, and paralegals will aid JAG Corps senior leaders in assessing the impact of trauma on the overall organizational health, develop effective trainings, assess its effectiveness, and aid in the development of trauma-informed policies, procedures, and recommendations.

Standardize Vicarious Trauma Training

Training on vicarious trauma is not new to the JAG Corps or its Judge Advocate General's School. Currently, vicarious trauma is taught by mental health professionals during flagship courses like the Staff Judge Advocate Course (SJAC), Law Office Manager Course (LOMC), Paralegal Advanced Developmental Education (PADE), and the Victims' Counsel Course (VCC). As the content of such trainings are often variable and fragmentary, it is imperative that the JAG Corps conduct an inventory of vicarious trauma trainings currently taught at its various course offerings, and assess their outcomes and effectiveness. The JAG Corps must enhance and standardize training on this topic. Trainings should be taught by mental health experts who possess a strong knowledge of military justice practice in the Department of the Air Force, preferably a circuit-embedded mental health clinician who works with military judges, litigators, and paralegals, and who is familiar with their needs and challenges.

Vicarious trauma should be taught at all foundational military justice courses. As attendees in these courses are often in their first six years in the JAG Corps, training on vicarious trauma should emphasize how to recognize and address the early signs and symptoms that mimic post-traumatic stress and the steps for mitigating the impact of vicarious trauma, to include how to develop resilience and healthy coping skills, and create a personal and professional care plan.

Vicarious trauma training should continue as military members advance in rank. Training on vicarious trauma should be offered in leadership courses such as SJAC, Gateway, LOMC, and PADE. Specialized trainings appropriate for the demographics of these courses should cover matters such as balancing caseloads, staffing difficult cases, supporting subordinates, and creating a trauma-informed workspace. Trainings for these mid-career and senior leader courses should infuse a blend of scenario-based case studies, guided discussions, and forums to share personal experiences and best practices.

As collegial peer support is equally important in combating post-traumatic stress, elective vicarious trauma training should be offered at intermediate and advanced advocacy courses which are primarily attended by litigators. These opportunities will afford sitting practitioners the time and opportunity for personal and emotional reflection with peers.

Vicarious trauma can hit after one case or after years of handling or overseeing disturbing cases.

Psychological Assessments

In an effort to monitor and address the emergence of negative mental health outcomes and safeguard against vicarious trauma, many forensic workers who respond to massive disasters and law enforcement officials undergo screening for stress-related disorders during their career.^[23] For instance, New York Police Department officers who were dispatched to assist family members from the September 11th terrorist attack were screened for vicarious trauma six months after the event and 20 percent of them exhibited symptoms of post-traumatic stress.^[24] Military judges, litigators, and paralegals who are at an increased risk of being exposed to the trauma endured by others should undergo similar screening. Research shows “self-assessment and screening tools for vicarious trauma raises awareness of personal strengths and vulnerabilities and establishes a baseline of symptoms that could be monitored over time.”^[25] For this reason, it is

imperative that the JAG Corps implement psychological assessments at various stages of a military judge, litigator, and paralegal’s assignment in litigation-centered roles.

A psychological assessment by a circuit-embedded mental health professional at the onset of a member’s litigation-centered assignment can assist in assessing any baseline symptoms that should be monitored over time. This initial consultation allows for mental health clinicians to work with military judges, litigators, and paralegals in developing a personal mental health care plan. Such assessment should be completed within 90 days of the JAG Corps member beginning their litigation-centered assignment. Another assessment should be completed mid-way through the assignment to assess the emergence, if any, of any negative mental health outcomes and to develop a treatment or care plan. At the conclusion of the litigation-centered assignment, an outgoing assessment should focus on providing resources and post-assignment counseling and making recommendations for further counseling, if necessary.

Post-trial, federal courts are doing what they can to help jurors exposed to horrific testimony. Trauma counseling provides jurors with an opportunity to walk through their experiences and unload the emotional and mental burden in an effort to prevent vicarious trauma.^[26] The same effort should be afforded to military trial participants, namely military judges, litigators, and paralegals.

“Vicarious trauma can hit after one case or after years of handling or overseeing disturbing cases.”^[27] The ability to process the psychological and emotional effects with a licensed mental health professional familiar with the nature of a litigator’s duties and responsibilities helps to ensure appropriate assessment and counseling is provided. Assessing the needs of military judges and litigators at the onset of their litigation-centered assignments, providing personal guidance, treatment and tailored resources at the appropriate time during the assignment, and conducting an outgoing assessment to make recommendations for future mental health needs, are all efforts that the JAG Corps can and should implement to combat vicarious trauma.

CONCLUSION

The Department of the Air Force must make an immediate concerted effort to combat vicarious trauma in its litigation practice. The practice of law, notably military justice, may result in repeated and/or extreme indirect exposure to aversive details of traumatic events experienced by others. Military judges, litigators, and paralegals are at an increased risk of experiencing the psychological effects of vicarious trauma from continuous exposure to traumatic materials and stories of a victim's traumatic event, which, if unaddressed, may lead to PTSD. Mitigating vicarious trauma requires a comprehensive strategic plan that calls for the JAG Corps to employ a supervisory mental health professional and embed at least one licensed mental health professional within each of the five litigation circuits, enhance and standardize education and training on vicarious trauma for trial participants and those who lead them, and implement psychological assessments at various stages of a military judge, litigator, and paralegal's litigation-centered assignment.

The impact of secondhand exposure to trauma on courtroom personnel and trial participants has been studied and taught for years. The time has come for the JAG Corps to develop and implement policies and initiatives to identify and mitigate vicarious trauma and its effect on Department of the Air Force military judges, litigators, and paralegals.

Edited by Capt Maureen Dowling

Layout by Thomasa Huffstutler

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EXPAND YOUR KNOWLEDGE

- **What is Vicarious Trauma?**
<https://ovc.ojp.gov/program/vtt/what-is-vicarious-trauma>
- **Vicarious Trauma Toolkit**
<https://ovc.ojp.gov/program/vtt/introduction>
- **Lunch & Learn Series: Vicarious Trauma**, <https://www.dvidshub.net/video/812665/lunch-learn-series-vicarious-trauma>
- **Drowning in Empathy: The Cost of Vicarious Trauma**, (TEDx Talks) <https://youtu.be/Zsaorjlo1Yc>

ENDNOTES

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- [6] AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 (5th ed. 2013). It is important to note that (1) exposure through electronic media would not apply unless exposure is work-related and (2) not all individuals who experience trauma or who are exposed to trauma will develop PTSD.
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