

**Remarks from Protect Our Defenders President, Don Christensen, Colonel (ret.) USAF  
Judicial Proceeding Panel on Sexual Assault in the Military  
December 12, 2014**

Good morning and thank you for the opportunity to speak about the SVC program. Let me start by saying that I am a big supporter of the program, and Protect Our Defenders has been a champion of the program from its inception. Protect Our Defenders has filed amicus briefs in several important appellate cases involving victims' rights including LRM v. Kastenber. Thanks to the efforts of Congress, military survivors of sexual assault now have the right to a confidential advisor to help guide them through a complex and adversarial process.

The SVC program has given our military survivors a voice where they had none. However, this does not mean the program is without challenges or in need of improvement. Nor will it impact the degradation of mission readiness caused by the failures to structurally reform the broken military justice system.

To his credit, the former Air Force TJAG, Lt Gen Richard Harding, was the first of the services' Judge Advocate Generals to provide survivors with a military counsel. When he did so many, if not most, of the senior leaders of the Air Force JAGC opposed him. He was also opposed by the other services. I admire Lt Gen Harding for his determination to initiate this new program in the face of such opposition. Unfortunately, opposition to SVC programs is still prevalent.

Within a few days of the Air Force launching the SVC program, I had an opportunity to meet with the Joint Services Committee (JSC) to talk to them about what the Air Force was doing. I also at that time told them that this was a sea change, and that in order for the program to work, the JSC needed to propose changes to manual to codify the role of the SVC. The members of the JSC were dismissive of the Air Force and they were not interested in amending the Rules of Courts-Martial. Instead, they talked about maybe doing a study to see if there was a need for SVCs. Now almost two years later the JSC still has not proposed rules governing the SVC's role in the court-martial process. Rather, it has been left to the appellate courts, trial judges and staff judge advocates (SJAs) to ad hoc define the role of the SVC. The results have been a haphazard implementation of the programs throughout the services with an ill-defined role of the SVC in courts-martial.

I remember while preparing the government's response for the LRM appeal talking to a very senior member of the JAGC. He told me the SVC program was unnecessary because "the prosecutor represents the victim." I was stunned that such a senior member of the JAGC did not understand the ethical limitations that would prohibit a trial counsel from representing a victim or providing the victim legal advice. I bring this brief history up so that this panel may understand that many in the services vehemently opposed the creation of the SVC program and many continue to resist it today.

As a result of this hostility to the program, vital improvements have not been made. CAAF decided LRM almost 18 months ago. Yet, despite that fact that CAAF recognized the right of a victim to be heard through counsel, no steps have been made to define the SVC's role through changes to the RCM. As a result of this neglect, SVCs face a continual struggle to be heard in court, to receive evidence needed to represent a survivor, to have access to motions filed by the parties, or to be consulted prior to scheduling Article 32 hearings, Article 39(a) sessions or trials.

For the SVC program to be effective it is time for these reforms to be made. The Rules For Courts-Martial must be amended to empower SVCs to fully represent their clients. It is time to stop the guessing game as to what the SVC's role will be in the process. The rules need to make it clear that the SVC is entitled to discovery of evidence and access to motions filed before a court. Forcing survivors to file FOIA requests is simply unacceptable. It must be clear at what times the SVC may advocate before the court, and to what extent the SVC's schedule must be considered when setting dates for hearings. To leave that the whim of SJAs and judges is simply unfair to the victims and the judges. As a former military judge, I can tell you judges prefer to have clear rules rather than guessing what the right answer is.

In addition to defining the role of the SVC in the adversarial process of a court, it is equally important for clarity in helping a survivor navigate the often-hostile world of the chain-of command. The just released RAND survey found that 62% of military women who reported a sexual assault faced retaliation, often from the chain-of-command. Protect Our Defenders hears all too often the stories of survivors who have faced punishment, discharge, and being ostracized. SVCs tell us they are often powerless to help survivors overcome this retribution. Moreover, SVCs tell us they have been victims of retaliation. Some have told us, while advocating for their client they have been warned to "watch their rank," or told by their superior that sometimes the interest of the service comes before the interest of the victim.

Currently SVCs cannot assist survivors with complaints to Congress or the IG. Moreover, SVCs are severely restricted in representing clients who face adversarial or criminal actions. This must be changed.

Finally, while we have many dedicated SVCs, the services are not selecting experienced counsel to fill these roles. SVCs have often never prosecuted or defended a sexual assault or rape case. For many, their first exposure to a sexual assault case comes when advising a survivor.

The SVC program is an important step in providing the few victims who report a confidential advisor, someone in their corner to fight to protect their privacy rights.

But those who thought the program was a solution to addressing the scourge of sexual assault and rape are not correct. This mischaracterization misleads congress

and the American public. It is a cruel disservice to our service men and women, who are victims of sexual assault and, too often, are re-victimized by retaliation from their commands and their units.