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*Law in the Service of Human Needs*

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The Honorable Elizabeth Holtzman, Chair  
The Judicial Proceedings Panel  
One Liberty Center  
875 N. Randolph St., Suite 150  
Arlington, VA 22203

Dear Madame Chair and Panel Members,

Thank you again for the opportunity to testify before the hearing last Friday, March 13, 2015. I am submitting this supplemental letter to reference some of the information presented in my testimony, and to respond to questions raised at the hearing.

Some panel members asked about the number of civil claims brought by survivors of intimate partner and sexual assault, and how much typically is recovered in those claims. Unfortunately, that data is difficult to ascertain. As I recounted in my testimony, survivors report outstanding expenses for medical costs, lost wages and lost productivity, and pain and suffering.<sup>1</sup> Medical costs have been estimated at \$2,084 per victimization for those who have received treatment.<sup>2</sup> Other estimates place the cost of an incident of sexual assault to a survivor at up to \$110,000, including medical and mental health care, lost productivity, and pain and suffering.<sup>3</sup> The Centers for Disease Control found that over twenty percent of women who were raped and over seventeen percent of those physically assaulted by an intimate partner lost an average of 7-8 days of paid work.<sup>4</sup> One study of those raped by an intimate partner found that more than 1/5

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<sup>1</sup> See, e.g., CTR. FOR DISEASE CONTROL & PREVENTION, NAT'L CTR. FOR INJURY PREVENTION & CONTROL, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES (2003), at 2 available at <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf> [hereinafter "CDC 2003 Report"]. The CDC has estimated that the costs of intimate partner rape, physical assault, and stalking exceed \$ 5.8 billion each year, \$4.1 billion in direct costs of medical care and mental health care and nearly \$1.8 billion in indirect costs of lost productivity. *Id.* at 2, 32; 40 tbl 12.

<sup>2</sup> CDC 2003 Report, at 29; accord The White House Council on Women and Girls, *Rape and Sexual Assault: A Renewed Call to Action*, (Jan. 2015), at p 15.

<sup>3</sup> HUGH WATERS ET AL., WORLD HEALTH ORGANIZATION, THE ECONOMIC DIMENSIONS OF INTERPERSONAL VIOLENCE (2004), at 22, available at [http://www.who.int/violence\\_injury\\_prevention/publications/violence/economic\\_dimensions/en/](http://www.who.int/violence_injury_prevention/publications/violence/economic_dimensions/en/) (citing studies).

<sup>4</sup> CDC 2003 Report, at 18, 19, 42 tbl 14.

report losing time from paid work,<sup>5</sup> and a published study of sexual assault victims found that one half reported losing their job in the aftermath of the assault.<sup>6</sup>

Yet recovery for those expenses, even when not compensated from other sources, may not be sought or obtained through civil litigation. Scholars have examined the dearth of tort claims arising from intimate partner and sexual violence.<sup>7</sup> My own research has detailed and theorized reasons for the relative lack of civil claims brought by survivors under civil rights laws providing redress for gender-based violence.<sup>8</sup> Organizations such as the Victim Rights Law Center may offer useful insights into the typical amount of recovery, whether through trial or settlement, in the cases that are brought. The Panel also may find useful the information collected by the Office for Victims of Crime, which reports data on the number and amount of claims awarded through state victim compensation programs.<sup>9</sup>

Other questions concerned potential models for victim compensation programs. In addition to the 9/11 Victim Compensation Fund, which I detailed in the article included in the briefing materials,<sup>10</sup> the Panel may wish to consider alternate models of institutional accountability. In many if not most cases involving military sexual assault, the military stands in the shoes of the employer of the alleged perpetrator. Consequently, analogies to models of institutional accountability when employees or agents perpetrate sexual assault may be apt. Some of those cases may proceed as tort claims, while others may be relegated to the workers' compensation system.<sup>11</sup> Other models might draw on anti-discrimination claims under statutes such as Title VII of the Civil Rights Act of 1964,<sup>12</sup> and Title IX of the Education Amendments of 1972,<sup>13</sup> which generally provide avenues for holding employers or educational institutions liable under certain circumstances for sexual assault committed by employees.<sup>14</sup> Indeed, the

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<sup>5</sup> *Id.* at 31. In addition, nearly 15 percent (13.5%) report losing time from household chores; rape victims lose an estimated 1.1 million days of activity each year. *Id.*

<sup>6</sup> Ellis, 90 J. Abnormal Psych 263 (1981).

<sup>7</sup> For discussion of civil cases arising from domestic violence, see, e.g., Sarah M. Buel, *Access to Meaningful Remedy: Overcoming Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders*, 83 ORE. L. REV. 945, 949-55 (2004); Clare Dalton, *Domestic Violence, Domestic Torts and Divorce: Constraints and Possibilities*, 31 NEW ENGLAND L. REV. 319, 350-53, 366-68 (1997); Jennifer Wriggins, *Domestic Violence Torts*, 75 S. CAL. L. REV. 121, 133-51 (2001). For cases involving civil assault see, e.g., Ellen M. Bublick, *Tort Suits Filed by Rape and Sexual Assault Victims in Civil Courts: Lessons for Courts, Classrooms and Constituencies*, 59 SMU L. REV. 55 (2006).

<sup>8</sup> See, e.g., Julie Goldscheid, *Elusive Equality in Domestic and Sexual Violence Law Reform*, 34 FLA. ST. L. REV. 731, 755-56, 769-70 (2007) (discussing *inter alia*, lack of awareness, victim unwillingness to re-engage with abuser, difficulty of collection, lack of access to counsel, as well as enduring gender bias in the justice system and the limitations of available remedies); accord, Julie Goldscheid, *Crime Victim Compensation in a Post-9/11 World*, 79 TULANE L. REV. 167, 222-24 (2004).

<sup>9</sup> See, e.g., Office of Justice Programs, Office for Victims of Crime, [http://ojp.gov/ovc/grants/vocanpr\\_vc12.html](http://ojp.gov/ovc/grants/vocanpr_vc12.html).

<sup>10</sup> See Goldscheid, *Crime Victim Compensation*, *supra* note 8, at 195-201.

<sup>11</sup> See, e.g., Julie Goldscheid & Robin Runge, ABA Commission on Domestic Violence, *Employment Law & Domestic Violence*, at 10-11 (summarizing recourse for acts by abusers at the victim's place of employment).

<sup>12</sup> 42 U.S.C. 2000e *et seq.* (2015).

<sup>13</sup> 20 U.S.C. 1681 *et seq.* (2015).

<sup>14</sup> See, e.g., Julie Goldscheid, *Gender Violence and Work: Reckoning with the Boundaries of Sex Discrimination Law*, 18 COLUM. J. GENDER & L. 61, 78-80 (2008) (summarizing applicable legal theories); see also, e.g., U.S. Dep't of Education, Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence*, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>; The White House, *Presidential Memorandum – Establishing Policies for Addressing Domestic Violence in the Federal Workforce*,

landmark case *Meritor Savings Bank v. Vinson*, in which the Supreme Court recognized that sexual harassment was a form of impermissible sex discrimination, was a case involving allegations of repeated sexual assault by an employee's supervisor.<sup>15</sup> I would be pleased to provide more detailed information about how those standards operate if the Panel would find that useful.

I commend the work of the Panel in taking on this important issue. Thank you again for the opportunity to offer testimony. I would be happy to answer any additional questions.

Respectfully,

Julie Goldscheid

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<https://www.whitehouse.gov/the-press-office/2012/04/18/presidential-memorandum-establishing-policies-addressing-domestic-violence>.

<sup>15</sup> 477 U.S. 57 (1986).