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Congress of the United States
House of Representatives
Washington, DC 20515-2103

December 11, 2014

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

Dear Chairwoman Holtzman and members of the panel,

I am writing you in advance of the Judicial Proceedings Panel Public Meeting on December 12, 2014 on the Special Victims Counsel (SVC) program. I appreciate this opportunity to comment on the creation of the program and its implementation.

The SVC program has its roots in the 2009 Defense Task Force Report on Sexual Assault in the Military Services. This report found that sexual assault victims often mistook the prosecutor as their lawyer and attempted to rely on the prosecutor for advice. Victims did not understand that prosecutors represented the government's interests before their own. As I began to look into the issue further, I heard many stories from survivors of sexual assault about the difficulties of navigating the Uniformed Code of Military Justice (UCMJ) and was motivated to ensure that victims would have a legal representative to guide them through the complicated military justice system.

In 2010, I co-authored the Defense Sexual Trauma Response, Oversight, and Good Governance Act (Defense STRONG Act) with Congressman Mike Turner. The bill included the right to legal assistance for victims of sexual assault. While provisions from the bill were included in both the House and Senate defense bills that year, the Department of Defense fought back against the legal assistance provision (as well as all the other provisions in Defense STRONG) and it was not included in the final defense bill. In 2011, Congressman Turner and I introduced the Defense STRONG Act again and its provisions became law as part of the Fiscal Year 2011 National Defense Authorization.

As the legal assistance provision from Defense STRONG was implemented by each of the services, I discovered that some in the Air Force believed that this provision only applied to civil legal matters—meaning that attorneys could help victims break rental agreements but that they could not help victims with the UCMJ process. To his credit, Lieutenant General Richard Harding brought this issue to then-Department of Defense General Counsel Jeh Johnson who

determined that the provision allowed for legal representation in a criminal as well as a civil context. After Mr. Johnson issued his legal opinion, General Harding, with the support of then-Secretary of the Air Force Michael Donley, began the Special Victims Counsel program as a pilot in January 2013. Several months later, after seeing the pilot's early success, Congressman Turner and I introduced the Better Enforcement for Sexual Assault Free Environments Act of 2013 (BE SAFE Act) which required that the Department of Defense (DoD) designate legal counsel for victims of sex-related offenses in all of the Armed Services. The provisions of the BE SAFE Act became law as part of FY14 National Defense Authorization Act.

I believe that providing victims of sexual assault access to legal counsel is critical to creating an environment that encourages victims to report these crimes and have been deeply impressed by the services commitment to the SVC program. Similarly, I am heartened by surveys that show high rates of victim satisfaction within these programs. Since the SVC's creation, my staff has noticed that my office is asked to intervene less frequently in military sexual assault cases. I believe that this decline may be at least partially due to the fact that victims now have a dedicated attorney who can help them to better understand the legal system and the choices ahead of them.

Nevertheless, as the SVC program expands within each of the services, some issues have arisen. Each service is implementing the program differently, which leads to problems with oversight and to confusion about the type of representation that each service provides. The programs even have different names: the Navy and the Marines refer to their program as the Victims' Legal Counsel instead of as the SVC. Further, confusion remains regarding access to the program. Victims in the National Guard and Reserve have been denied access to counsel when they are assaulted outside of their "drill weekend." And as servicemembers pointed out to me on a recent visit to Wright Patterson Air Force Base, DoD civilians assaulted by active duty members of the military also lack the right to counsel, which means that DoD civilians that are victims of sexual assault on a military base and that are going through the military justice process are not offered the same resources as their servicemember counterparts. For the program to continue successfully, many of these issues will have to be clarified.

To improve a culture that has allowed sexual assaults to occur for far too long, the services must remain committed to the SVC program's continued expansion and robust funding. I appreciate this opportunity to share my views on the program and should you have further questions please feel free to contact my Legislative Counsel, Sara Outterson at (202)225-3411.

Sincerely,



Niki Tsongas
Member of Congress