

RE: Victim-Centered Investigations in Military Sexual Assault Cases Impede Justice

November 10, 2016

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

Dear Madam Chair,

The Center for Prosecutor Integrity (CPI) has appeared before the Judicial Proceedings Panel (JPP) on three prior occasions to make public comment. We thank your Panel for working to improve the military's ability to respond to and adjudicate sexual assault allegations, and we appreciate the opportunity to express our commitment to assuring fairness for both the accuser and the accused.

CPI has convened numerous meetings with military attorneys, military investigators, active duty and retired service members, law enforcement professionals, concerned advocates, and Congressional staffers. During these meetings, a number of persons have expressed concerns with the growing use of so-called "victim-centered" investigations in the context of military sexual assault proceedings. Victim-centered investigations instruct investigators to "start by believing" the accuser¹ and "assume that all allegations are true until proven otherwise."² Further, proponents of the victim centered models ask investigators to "respect a victim's right to request certain investigative steps not be conducted," and suggest that criminal investigations be "conducted at a pace set by the victim, not the law enforcement officer."³

A recent US Army training program likewise has endorsed the concept of victim-centered investigations.⁴ The basic flaw of the training program is its repetitive and illogical use of the term "victim," when "complainant" is the legally accurate term in the adjudication context. Conflating "victim" with "complainant" vitiates the presumption of innocence, ignores the

¹ See: <http://www.startbybelieving.org/CanIReallySayThat.aspx>

² COPS, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence, Dept. of Justice, December 15, 2015.

³ Id. at 13.

⁴ See: http://schr.ws/hosted_files/2016ncviconference/ee/Atkins%20NCVLI%20Presentation.pdf

problem of false allegations of sexual assault, and obviates the need for an impartial, objective investigation.

Military law enforcement agents, are required to adhere to a code of ethics that states in pertinent part, “I proudly recognize my obligation to perform my duty with integrity, loyalty, and honesty. I will assist and protect my fellow soldiers in a manner that is fair, courteous, and impartial.”⁵ These ethical tenets stand at odds with the principles of a victim-centered investigation. Investigators cannot conduct an impartial/fair investigation if they are asked to commence their work with a presumption of guilt.

On October 4, 2016, the Center for Prosecutor Integrity observed Wrongful Conviction Day by hosting a national Forum titled, “How Victim Centered Investigations Undermine the Presumption of Innocence and Victimize the Innocent.”⁶ Among the expert panelists was Carolyn Martin, the only full-time defense investigator within the Department of Defense. Martin noted her experiences with some military investigators conducting their investigations with a callous disregard for the rights of the accused. She concluded that victim-centered approaches exacerbate the problem of investigative confirmation bias.

Some persons have confused “trauma-informed” with “victim-centered” techniques. CPI supports the use of trauma-informed methods to minimize sexual assault complaints from being re-victimized. Trauma informed techniques properly teach law enforcement to be mindful of the ways in which trauma can potentially manifest itself, and respond appropriately. They do not, however, cede control of the process over to the complainant or ask investigators to reflexively accept the allegation as true.

CPI recommends that investigators follow justice-centered procedures:

- Conduct every investigation with objectivity and impartiality, setting aside any preconceived notions about complainants or accused.
- Make reasonable efforts to contact all potential witnesses, not just those recommended by the complainant or accused.
- Thoroughly document all evidence, both inculpatory and exculpatory, including video recording statements made by the complainant and accused.
- Make all discoverable evidence available to the complainant and the accused.

⁵ Military Police Creed, available at: <http://www.wood.army.mil/engrmag/PDFs/Spring%202010/Watson.pdf>.

⁶ CPI Report, available at: <http://www.prosecutorintegrity.org/wrongful-conviction-day/victim-centered-investigations-undermine-the-presumption-of-innocence-and-victimize-the-innocent-report-of-an-expert-panel/>

The due process protections of the criminal justice system were created to protect individuals who lack the enormous resources of the government. If investigators are instructed to “put their thumb on the scale” and cede control to the complainant, the accused will be unconstitutionally prejudiced and wrongful convictions will surely ensue.

Victim-centered investigations have been compared with “Jim Crow” laws that resulted in the wrongful convictions of thousands of African-American men after the Civil War.⁷ The Center for Prosecutor Integrity, and the undersigned members of the CPI military justice project, urge the Judicial Proceedings Panel to assure that sexual assault investigations in the military be conducted in an impartial, fair, and unbiased manner.

Sincerely,

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⁷ <http://saveourheroesproject.org/falsely-accused-military-service-members-share-their-stories-on-capitol-hill/>