

141. What likely anticipated impact would a policy granting immunity to victims for the most common types of collateral misconduct have on:

- A. victim reporting?
- B. the prosecution of sexual assault cases?
- C.

USA	<p>As discussed in the responses to questions 138-141, there is no empirical evidence to support an assertion that systemically victims are inappropriately or unfairly punished for collateral misconduct. Therefore, a recommendation for a policy granting immunity to victims for collateral misconduct would be premature without careful study through statistical and survey data.</p> <p>Answer A. Victim reporting?</p> <p>Reporting: Although there is some empirical evidence that suggests immunity would increase general reporting, that data does not provide definitive guidance. In the 2012 Workplace and Gender Relations Survey, 23% of active component female servicemembers and 22% of active component male servicemembers who experienced unwanted sexual contact cited fear that “you or others would be punished for infractions/violations, such as underage drinking” as one of the factors for not reporting the unwanted sexual contact. As victims may choose multiple reasons for not reporting, the survey results do not indicate if the fear of punishment was the primary reason for not reporting or a lesser factor in the decision. Also, because the type of unwanted sexual contact experienced is not correlated with the reasons for not reporting, the survey does not establish if the fear of being punished affects reporting of penetrative crimes, contact crimes or attempts. Anecdotally, in testimony before the Response Systems Panel, some victims have expressed fear of consequences for collateral misconduct as a factor in the decision whether or not to report. These victims, however, tend to have committed more serious collateral misconduct as opposed to the typical offenses of underage drinking or inappropriate relationships. Victims who fear the consequences for collateral misconduct have always had the option to make a restricted report.</p> <p>Answer B. Prosecution of sexual assault cases?</p> <p>Prosecution: A policy granting immunity to victims for the most common types of collateral misconduct could hamper the Army’s ability to hold offenders accountable for sexual assaults and could undermine good order and discipline in some units. In the overwhelming majority of contested sexual assault courts-martial, consent is the central issue. A very common defense tactic is to suggest that a victim who consented to sexual conduct later reports that the conduct was not consensual in order to avoid consequences of their actions. For example, it is suggested at trial that a victim lied about a sexual assault in order to cover up sex outside a committed relationship. Another common scenario is for an accused to argue that a victim has lied about a sexual assault in order to avoid the consequences of the victim’s misconduct, including underage drinking or inappropriate relationships. Providing blanket immunity for a victim’s collateral misconduct could provide the defense counsel with further fodder to</p>
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	<p>support these tactics to challenge the credibility of victims. The Army observed this with the "expedited transfer" policy, which was immediately incorporated into defense trial practice as a specific (and on occasion, plausible) motive for the victim to fabricate. At best, a blanket immunity policy would allow the defense to make a plausible argument that the victim had a motive to fabricate. At worst, the policy might actually incentivize Soldiers to fabricate reports of sexual violence in order to escape scrutiny of their own misconduct. Further, holding victims appropriately accountable for minor collateral misconduct, for example with referrals to alcohol counseling and administrative counseling statements, helps maintain good order and discipline in units. The failure to hold victims to the same standard as all other Soldiers can have the unfortunate effect of causing resentment against victims by other members of the unit and can lead to ostracizing the victim and other forms of re-victimization. Current policy elevates the disposition authority for addressing victim collateral misconduct to the Special Court-Martial Convening Authority and advises commanders to delay any action until after the sexual assault allegation is resolved and to "take into account the trauma to the victim and respond appropriately so as to encourage reporting of sexual assault and the continued cooperation of the victim." This current policy provides commanders, and the advising judge advocates, the flexibility to address collateral misconduct if appropriate.</p>
USAF	<p>Answer A: Victim reporting?</p> <p>It is unknown whether a policy granting immunity to victims for collateral misconduct would impact victim reporting. In the last 4 years, privacy has ranked as victims' number one reason for not reporting, while fear of being punished for collateral misconduct ranks relatively low. In the 2012 Workplace and Gender Relations Survey of Active Duty Members, 70% of victims stated they did not report their assault because they did not want anyone to know, while 23% reported they were afraid of being punished for other infractions (victims could have selected more than one reason). Based on this data, if victims were granted immunity, it may increase overall reporting; however there are many reasons why victims do not report and often it is a combination of reasons, of which concern over collateral misconduct may play a role. However, one potential collateral consequence of such a policy is an increase in perception that many sexual assault allegations are false (e.g. "she made up the rape allegation so she wouldn't get in trouble for underage drinking") and additional scrutiny of the credibility of victims. This perception of false reporting to avoid disciplinary action for collateral misconduct in turn could have a chilling effect on victim reporting.</p> <p>Answer B: The prosecution of sexual assault cases?</p> <p>This could make sexual assault prosecutions more difficult because arguments would be made that a victim only reported a sexual assault simply to gain immunity for other misconduct, i.e., underage drinking or drug use. Further, this could make the collateral misconduct much more of an issue at trial than it otherwise would have been. As an example, victims who request an expedited transfer already frequently face cross-</p>

	<p>examination on the issue along the lines that they only reported a sexual assault in order to obtain a favorable transfer to a new duty location.</p>
USN	<p>Answer A: Victim reporting?</p> <p>Full analysis of this issue is required in order to assess the impact of collateral misconduct immunity on victim reporting.</p> <p>Answer B: The prosecution of sexual assault cases?</p> <p>Full analysis of this issue is required in order to assess the impact of collateral misconduct immunity on the prosecution of sexual assault offenses.</p>
USMC	<p>Answer A: Victim reporting?</p> <p>Granting immunity to victims for the most common types of collateral misconduct would alleviate the fears and concerns of some victims who have reported sexual assault offenses. Such a policy may also make the decision on filing an unrestricted vice restricted report easier for a victim who fears punishment for their misconduct. However, without full analysis of this issue one can only speculate as to the overall effect. Reporting of allegations of sexual offenses may increase. However, there is the potential that victims would then make reports to avoid the consequences of misconduct for which the victim fears punishment. These false reports would significantly detract from the investigation, victim assistance and response, and the military justice process.</p> <p>Answer B: The prosecution of sexual assault cases?</p> <p>Without a full study of this issue, the impact of collateral misconduct immunity on the prosecution of sexual assault offenses is entirely speculative. Currently, a commander or convening authority deals with collateral misconduct as a separate issue in a manner consistent with MCO 1752.5B and the command's normal practices – this removes the appearance of a motive for a victim to fabricate an allegation. It also allows the commander to exercise good order and discipline over his or her command. Potentially, blanket immunity could have a significant, negative impact on the successful prosecution of sexual assault allegations. Such a policy would introduce an apparent "motive to fabricate" into any case in which the victim is suspected of committing collateral misconduct, subjecting the victim to additional cross-examination. Without this policy, a victim can garner great credibility and sympathy for admitting misconduct and facing appropriate punishment. Since many sexual assault cases arise under circumstances in which the victim and the accused are the only witnesses to the crime, any policy which would detract from the credibility of the victim could have a detrimental effect on successful prosecution. Additionally, such a policy would create disparity of treatment in that an accused is often charged with the same offense as the victim's collateral misconduct (false official statement, underage drinking, fraternization, adultery, etc.). It is not unusual for an accused to be acquitted</p>

	of allegations of sexual assault, only to be found guilty of the collateral misconduct.
USCG	<p>Answer A: Victim reporting?</p> <p>In alignment with DOD, the Coast Guard delays investigation into a collateral misconduct issue until the investigation into the sexual assault case reaches resolution. It is not a “free pass” but it places the appropriate emphasis on the crime of sexual assault rather than on the collateral misconduct. It is likely that simply granting immunity for victims for collateral misconduct would have a negative effect overall and would make it difficult to differentiate between what is actually occurring and what might be said to not get into “trouble” for collateral misconduct issues.</p> <p>Answer B: The prosecution of sexual assault cases?</p> <p>The Coast Guard is still formulating its analysis with respect to the impact of granting immunity from prosecution of common collateral types of misconduct to alleged victims of sexual assault. It is possible that transactional immunity from prosecution from collateral misconduct would encourage victims of sexual assault to report, and participate in, the prosecution of the sexual assault. Current Coast Guard policy provides commanders with discretion on how to address collateral offenses, including the possibility of taking no action with respect to those offenses. The current system allows commanders to analyze each case on its particular facts. Adopting an immunity policy would also require an analysis of what constitutes a common collateral offense. A possible disadvantage of adopting a blanket policy of immunity for certain types of collateral offenses is that it could conceivably lead to an increase in false reports.</p>