

15. (ALL) Some assert that a commander's decision-making process is compromised in sexual assault cases because of an inherent conflict of interest between the commander's responsibility to enforce the UCMJ and his or her relationships with, and responsibility for, assigned personnel. Is this concern about a conflict of interest valid?

DOD	<p>DOD OGC: The decision on how to dispose of a sexual assault case does not lie with the immediate commander who may know the subject or victim as members of the unit. Rather, the decision on how to dispose of sexual assault allegations is made by a senior commander usually two or three levels up the chain of command from the immediate commander; such a superior commander almost invariably has little or no contact with the subject or victim. As a result, it is extremely unlikely that a convening authority's decision-making process would be subject to biases or conflicts of interest based on his or her relationship with the victim or subject. Moreover, removing a convening authority's prosecutorial discretion in sexual assault cases and giving it to a separate prosecutorial body does not eliminate conflict of interest concerns. Indeed, such an arrangement could create its own set of perceived or actual conflicts of interest such as only pursuing cases with a high likelihood of prosecutorial success while declining meritorious cases with less certain outcomes. Finally, any person subject to the UCMJ may prefer charges. Thus, commanders do not have the ability to preclude sexual assault charges from arising within their commands.</p> <p>DOD SAPRO: Commanders make countless daily decisions that impact the lives and careers of Service members and their families. They are accountable for mission accomplishment as well as the health, welfare, readiness, and discipline of those under their command. Concerns about a conflict of interest are invalid because commanders' role in the administration of justice is fundamental to their ability to carry out each of these responsibilities. In the event a conflict of interest does exist, there are measures in place to elevate or transfer a case to another convening authority.</p> <p>The committed involvement of leaders and commanders in every unit across the Department of Defense is central to our effort. They set and enforce standards of behavior that create a command climate where victims are supported and do not fear retaliation, where offenders know they will be found and held appropriately accountable for their crimes, and where bystanders are motivated to intervene to stop unsafe behavior. Commanders are essential to enforce standards and values and to improve reporting, requiring their attention to privacy concerns, appropriate care and professional advocacy.</p> <p>With regard to the perception of a supposed conflict, SECDEF's elevation of disposition decision-making for sexual assault offenses to an O-6 serving as a Special Court Martial Convening Authority removes the initial disposition decision</p>
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	<p>from the immediate commander. By elevating the initial disposition authority, a more seasoned and experienced senior commander assesses the evidence based on the independent report of investigation completed by DoD military criminal investigative organizations and on the advice of a military judge advocate.</p> <p>The Department has recently put in place important additional requirements to achieve a higher level of system accountability:</p> <ul style="list-style-type: none"> • SECDEF required the results of annual command climate surveys to be provided to the next level up in the chain of command, enhancing accountability. • At SECDEF’s direction, the Services are fielding new evaluation systems to assess the performance of commanders in incorporating sexual assault prevention and victim care principles in their commands. • SECDEF directed a Department-wide stand-down to communicate the specific responsibility of every Soldier, Airman, Marine, and Sailor to engage in establishing an environment of dignity and respect. The stand-down included direct commander engagement on sexual assault prevention and response principles. • Another important enhancement to commander accountability is the requirement to provide status reports of sexual assault allegations and the system response to the first general officer within the victim’s or subject’s chain of command. These oversight updates will augment the initial alerts and will include information on victim care and safety, investigative actions, unit climate, and response actions taken. This added layer of oversight will ensure victims receive appropriate support and commanders are held accountable for responding appropriately.
CJCS	<p>There is no inherent conflict of interest. The commander's concern for protecting and helping victims in their commands is an important aspect of his or her authority to ensure the wellbeing of the troops. The commander's responsibility for holding members of his or her unit that commit criminal acts accountable is fundamentally a part of the prerogative over good order and discipline. Article 1(9) of the UCMJ already requires commanders who have an actual conflict of interest from recusing themselves as a convening authority.</p>
USA	<p>The Army has consolidated responses to both question 15 and 18: This purported conflict of interest for a commander is systemically not valid. The U.S. Army is not aware of any empirical data, studies, or other credible evidence to support this asserted inherent conflict theory. On the contrary, for centuries, the commander has played a pivotal role in maintaining good order and discipline within the armed forces. The assertion that a commander’s decision making process is in any way compromised in sexual assault cases, or any other military justice matters, because of an “inherent conflict of interest” between a commander’s duties to maintain good order and discipline and the commander’s responsibilities for the welfare of all Soldiers assigned to that command assumes that those two responsibilities are mutually exclusive and are inconsistent with each other.</p>

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This assertion is false and fails to understand the full scope of command responsibility. It also falsely assumes that a commander cannot be fair and impartial or make fundamentally difficult decisions which may have a negative impact on individual Soldiers. Finally, this assertion fails to account for the layered structure of military units with graduated levels of command with greater responsibility to the overall mission and less connection with the individual Soldiers who ultimately make up a battalion, brigade, or division. Reduced to its most fundamental terms, a commander is responsible for the overall well-being of a unit as a whole, while meeting all of the needs of an individual Soldier in order to be able to ultimately order that Soldier as a part of a unit into potentially lethal combat. Commanders must care for, train, feed, house, pay, and discipline a Soldier, and often that Soldier's family, with the knowledge that ultimately the Soldier may not return from a military mission entrusted to that unit as a whole. Commanders are carefully selected and trained to make fundamentally difficult decisions, while being seen as being fair and impartial so that the commander's decisions will not be challenged as arbitrary by the subordinates who must follow those orders.

In the context of military justice, the commander has been entrusted to make timely, fair, and visible decisions to address indiscipline within a unit. Commanders recognize that misconduct by any one Soldier within the unit may have a negative impact on the unit as a whole and the unit's ability to complete its mission. In those cases where both the accused Soldier and the victim are in the same unit, the commander must – in order to retain command credibility – visibly respect the rights of the accused while providing for the needs of the victim. This applies to all cases, not just sexual assault cases. The commander – the “owner” of all of the resources within the command – is able to allocate the necessary resources to accomplish this mission. The commander's ability to fairly and visibly meet the needs of Soldiers with what might appear to be opposite interests enhances command authority and the reputation of that commander within the unit. This is true in cases of fights, thefts, or murders, among other offenses, when both the victim and the accused Soldier are in the same unit.

The assertion also fails to appreciate the concept of chain of command and the varying levels of command within the structure of Army units. In very general terms, the smallest unit with a commander is a company, multiple companies form a battalion, multiple battalions form a brigade, multiple brigades form a division, and multiple divisions form a corps. Commanders moving up the chain of command have increasing responsibilities which are commensurate with increased experience and maturity of command. Basically, there is always a more senior commander who can pull an issue, including a military justice matter, up to the next higher level of command. Generally, the more senior the commander, the more serious of the military justice matters entrusted to that commander. Junior commanders with the greatest contact and interaction with individual Soldiers accused of misconduct only address minor misconduct. In cases of sexual assault, the disposition decision has been entrusted to very senior commanders who generally have little knowledge

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	of or interaction with an accused Soldier.
USAF	<p>The concern is based on a misunderstanding of the commander's relationship with his or her assigned personnel. Commanders lead their people to accomplish an assigned mission. In doing so, commanders are expected to protect and safeguard the welfare of persons under their command. The commander is charged with the success of the mission of the unit and with the maintenance of the unit personnel's ability to perform the mission. To that end, the commander must be primarily concerned with the health, morale, welfare, discipline, and organization of the unit's personnel. The commander's decision to prefer charges against a member of his or her unit accused of sexual assault when the evidence creates a good faith belief that there is probable cause that a sexual assault has occurred is essential to the successful performance of his or her duties.</p> <p>Because unit discipline is inherent in the commander's relationship with his personnel, there is no conflict between that relationship and appropriate disciplinary measures.</p>
USN	<p>No, there is no inherent conflict of interest in the commander's role in military justice. In fact, the commander's responsibilities for his people and for military justice are complementary rather than conflicting.</p> <p>The commander is, first and foremost, responsible for mission accomplishment. To accomplish the mission, the commander must provide for the safety, health, and welfare of his people – all of his people. This means promoting a healthy command climate where sexual assault is not tolerated and where victims feel empowered to make reports of sexual assault if incidents occur. It also means administering a fair and impartial military justice system that promotes the interests of justice, protects the rights of victims as well as the due process rights of the accused, and holds offenders appropriately accountable. In short, a balanced military justice system is an essential tool that commanders employ in executing their responsibilities to their people so everyone knows they will be treated fairly. The end result is a command where the members are trained, ready, and motivated to work as a cohesive team toward accomplishing the command's mission.</p> <p>Commanders call upon the advice and assistance of experienced Navy judge advocates to help them implement a fair and balanced military justice system. These judge advocates assist by reviewing investigative reports, assessing the strength of each case, and making charging recommendations. Commanders consider the advice of judge advocates to inform their disciplinary decisions. Commanders take seriously their responsibilities for their people and for good order and discipline, and are committed to eradicating sexual assault, protecting the due process rights of the accused, and holding offenders appropriately accountable.</p>
USMC	<p>The Marine Corps believes that current regulations and policies appropriately mitigate or eliminate any conflict of interest problems, and when conflicts do occur, provide remedies to ensure a fair and appropriate investigation and disposition of a sexual assault allegation. There would be some validity to this conflict of interest concern if the commander had unitary control over every aspect</p>

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	<p>of a sexual assault case, but that is simply not the case in the current military justice system. A commander will of course eventually make the disposition decision in a case, but that decision involves numerous other agencies and individuals who educate, inform and add context to the commander's decision.</p> <p>When a sexual assault is first reported, a commander is not the only person who has knowledge of the event. As described above, NCIS, an independent law enforcement agency, must be immediately notified and is required to investigate the report, the victim's commander submits an 8-Day Brief to the first general officer in the chain of command, and a Serious Incident Report is submitted within six hours to the Commandant of the Marine Corps. Additionally, by current practice, the Senior Trial Counsel and the special victim capable prosecutors that would be responsible for working on a potential sexual assault prosecution arising out of the report are informed of the situation and make liaison with the NCIS agents investigating the report. Lastly, throughout this entire process, the commander is advised by his or her Staff Judge Advocate, who assists the commander in evaluating the criminal allegation and investigation, and with making a disposition decision.</p> <p>With all of these separate reporting requirements, and outside individuals and agencies involved in the investigation of a sexual assault report, it would be nearly impossible for a commander to make a disposition decision in the case based on personal bias in favor of the accused, and not based on the facts. Even if the immediate commander of the accused has an apparent conflict of interest in favor of an accused, there are two other important considerations that protect the integrity of the military justice process.</p> <p>First, for all allegations of sexual misconduct under Article 120 of the UCMJ (to include penetration and contact offenses) the initial disposition can only be made by an O-6 (colonel) or higher Special Court-Martial Convening Authority, who is known as the Sexual Assault Initial Disposition Authority (SA-IDA). The SA-IDA is often a commander with over 20 years of experience and multiple command tours. What this means, in practice, is that the Marine Corps now has a smaller group of more experienced Commanders making the disposition decisions in these complex cases. The elevation of the disposition decision to this group often eliminates any bias that a lower-level commander of a potential accused may have.</p> <p>Second, in the rare circumstance when the SA-IDA has a real or perceived conflict of interest, a higher level commander, such as the General Court-Martial Convening Authority, can take jurisdiction of the case from the SA-IDA.</p>
USCG	<p>There is no evidence of systemic conflict of interest in the military justice system. More importantly in the context of sexual assault, there is no evidence that supports the notion that there is bias that predisposes military commanders to find in favor of the accused.</p> <p>Commanders are accountable for the good order and discipline as well as the health</p>

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	<p>and well-being of their entire unit. To lead effectively, they must be perceived as making decisions that are fair, honest, consistent, and ethical. Military commanders, with the advice from their staff judge advocate, address allegation of sexual assault and other crimes in the same way a civilian prosecutor does- and reach the comparable results. If there is a decision not to prosecute, it is because there is a lack of jurisdiction, the victim desires not to participate, or there is insufficient evidence.</p>
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	<p>Additionally, no Commander has been passed over for promotion or relieved of command for the PROPER handling of a sexual assault case.</p>
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