

17. (ALL) Some have argued that removing the commander from his or her criminal disposition role would reduce unlawful command influence concerns and improve the chain of command's ability to build enforce unit cultures more resistant and responsive to incidents of sexual assault. Would commanders be more effective in sustaining unit culture if they were not responsible for the criminal disposition of sexual assault cases?

DOD	<p>DOD OGC:</p> <p>There is no easy and universal means to eliminating sexual assault. A convening authority is most effective when he or she is trusted by his or her subordinates to be fair and impartial and is trusted to set the standards, and to maintain and enforce the standards. If a convening authority is removed from his or her role as the initial disposition authority on sexual assault incidents, he or she will be viewed as a less effective commander, which in turn erodes good order and discipline, and leads to a less effective fighting force. The Department's multi-pronged approach involves numerous disciplines that educate and train service members to prevent and respond to sexual assaults. As more Departmental programs begin to take root, it is anticipated that victims supported by multiple resources will be more confident in their chain of command to hold offenders accountable. While some believe the panacea to sexual assault is to remove commanders from the criminal process, there is no evidence indicating that such drastic action will reduce or eliminate incidents of sexual assaults or increase offender accountability. In contrast, many military commanders, based on their unique experience, have opined that the opposite is true and they would be less effective in deterring sexual assaults if they no longer exercised court-martial convening authority over sexual assault cases. Such views were presented to the Response Systems Panel during its September 24 and 25 public meeting.</p> <p>DOD SAPRO:</p> <p>Commanders would not be more effective in sustaining a unit culture intolerant of sexual harassment and assault if they were removed from their criminal disposition role in sexual assault cases. Commanders and senior enlisted leaders are responsible for setting and enforcing standards of behavior and establishing good order and discipline -- essential to cohesive and mission-ready units. Their criminal disposition role in sexual assault cases is what enables them to enforce standards of behavior and create command climates free from sexual assault and sexual harassment. Removing disposition authority from commanders could weaken the system by diminishing commanders' role in ensuring that all allegations of inappropriate behavior are treated with the utmost seriousness, and that victims' privacy is protected and they are treated with sensitivity. As a result, commanders would be less effective in establishing enduring culture change where every Service member is treated with dignity and respect, where bystanders are motivated to intervene, and where offenders know they will be held appropriately accountable. The Department of Defense needs commanders more involved in sexual assault prevention and response, not less involved.</p>
CJCS	No, potentially the opposite could occur. Commanders would have an important tool

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	<p>in their toolbox removed if they no longer made disposition decisions. Limiting a commander's disciplinary authority over subordinates does not help reinforce supportive unit climate and positive culture. Commanders still have great influence over their subordinates. The need to hold commanders accountable for improperly attempting to influence the system will still exist, regardless of whether they own the process or not. The law of UCI will remain regardless of who makes the disposition decision-the two questions are not as related as some perceive them to be.</p>
USA	<p>No, the responsibility for the disposition of allegations of sexual assault or any criminal act is critical for a commander to be an effective leader of the unit as a whole. The timely, visible, and fair disposition of misconduct – of any type, but especially crimes in which a member of the command is victimized by another member of the command – creates a unit atmosphere or “unit culture” of fundamental fairness with a commander who looks out for the overall best interests of Soldiers within that unit. The commander is the single most important source of leadership within the unit and is both responsible and accountable for the command climate and tone created within the unit. The delegation of the disposition authority is an abrogation of authority and responsibility which would take away perhaps the single most important tool for a commander to establish the command climate of decisiveness and fairness. The transfer of this critical authority to some far off, backroom of lawyers unassociated with the command hides the process of criminal accountability from the line Soldiers within the unit, the Soldiers families, those impacted by the criminal acts, and the public at large. If a non-chain of command based system were to fail, who would the victim, the unit, and the public turn to for an explanation – not the commander whose authority was stripped away.</p>
USAF	<p>a. (AF) As discussed in the answer to question 16, relieving commanders of their responsibility to dispose of sexual assault cases would not make them more effective in sustaining unit culture. 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. Relieving the commander of this responsibility could undermine the commander’s position of authority to maintain the readiness and discipline of the unit’s personnel, not make it more effective.</p> <p>b. Question 17 presumes a climate of unlawful command influence (UCI) that impairs unit culture. That is not the Air Force culture. UCI has the potential to exist in any commander/subordinate commander relationship. A disposition authority separate from the command involved will have a chain of command, likely to include, at a minimum, the Service Chief, Service Secretary, the Secretary of Defense, and the President. To most effectively build and enforce unit cultures more resistant and responsive to incidents of sexual assault, commanders should have the</p>

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	<p>full range of case disposition authority they possess today. Commanders who fail to build and enforce proper unit cultures should be held accountable. We will continue to educate commanders and all military members on the threat UCI poses to the good order and discipline.</p>
USN	<p>No. Commanders are responsible and accountable for the safety, health and welfare of their people; commanders must have authority commensurate with this responsibility, and that includes the authority to maintain good order and discipline. This authority is critical to the integrity and effectiveness of our fighting forces. Building and enforcing a unit culture that is more resistant to sexual assault and more responsive to allegations of sexual assault necessitates having the ability to use accountability as a tool. A failure to hold offenders appropriately accountable not only impacts the victim but undermines teamwork and threatens unit readiness. Removing disciplinary authority over serious offenses denies commanders a vital enforcement tool to ensure a safe workplace, to maintain a healthy command climate promoting dignity and respect for all, and to field a force ready to execute the mission successfully – at sea and ashore, in peace and at war.</p>
USMC	<p>The Marine Corps disagrees with this question’s premise that removing the commander from the disposition decision will reduce unlawful command influence and allow commanders to be more forceful in creating cultures more resistant to sexual assault. This question implies that if an independent judge advocate made the criminal disposition decision, commanders could be more forceful in speaking out against sexual assault, thereby setting a culture more resistant to sexual assault. The logic behind this implication is that more senior commanders, such as general officers, could speak out against sexual assault without improperly influencing subordinate commanders who are making criminal disposition decisions. There is some merit to this logic, but it fails to consider other major aspects of unlawful command influence jurisprudence. Unlawful command influence affects much more than a commander making a disposition decision; it can also improperly affect witnesses, the convening authority’s selection of court-martial members (the jury), the performance of members in the court-martial, and the convening authority’s post-trial action. Unlawful command influence can affect a witness’ willingness to testify on behalf of an accused, either in the findings or sentencing phase of a court-martial. Unlawful command influence can impact which members a convening authority selects for a court-martial. It can also negatively influence members in their analysis of the evidence of the case, as well as their voting decisions. Lastly, unlawful command influence can adversely affect a convening authority’s discretion in taking Article 60 post-trial action after considering the accused’s clemency submission.</p>
CG	<p>The Commandant of the Coast Guard is committed to changing our organizational culture to eliminate sexual assault from our Service. The Coast Guard is conducting a campaign focused on prevention, investigation, advocacy, and accountability- all as part of an effort to change our culture. Any enduring change to our Service culture must include the commander's ability to instill that cultural change. Dramatically changing our system of justice to exclude commanders from criminal process at the</p>

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	<p>same time could impede those cultural changes.</p> <p>Sexual assault is not only a crime that requires justice; it is also, in the context of the military, a readiness issue that requires discipline. Discipline is the cornerstone of our well- trained and capable personnel that rise to the Coast Guard Service motto- Semper Paratus - Always Ready. Discipline is inculcated by our commanders, who are charged with the safety, morale, health, and welfare of their units and held ultimately responsible for mission execution in times of war and peace. The Uniform Code of Military Justice (UCMJ) is one of many arrows in the quiver by which commanders maintain good order and discipline. This reflects the notion that commanders are in charge of their units, not lawyers. Maintaining the unitary authority of command in parallel with the commander's role in the military justice system is absolutely essential to preserving and enhancing unit cultures more resistant and responsive to incidents of sexual assault.</p> <p>There is no evidence that Coast Guard commanders' responsibilities under the UCMJ have led to unlawful command influence or are likely to in the future.</p>
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