

18. (ALL) Some assert that a convening authority’s decision-making process is compromised in sexual assault cases because of an inherent conflict of interest between the convening authority’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: See response to question 15.</p> <p>DOD SAPRO: See response to question #15. Senior Commanders, those occupying convening authority positions, make profound decisions every day -- both in and out of combat -- 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.</p> <p>Additionally, convening authorities are typically General or Flag Officers and, generally, have no previous personal relationship with the victim or the alleged offender who, according to the Department’s data, are most often near peer 18- to 24-year-old junior enlisted members.</p>
CJCS	Reference response for RFI # 15 in situations where the commander and the convening authority are the same. For some sexual assault cases, the convening authority does not have a direct command relationship.
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. 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.</p>

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	<p>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.</p> <p>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.</p> <p>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 for 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 commiserate 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 of or interaction with an accused Soldier.</p>
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</p>

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	<p>concerned with the health, morale, welfare, discipline, and organization of the unit's personnel. The commander's decision to take action 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. Therefore there is no conflict between the commander's responsibilities and his or her relationship with the unit personnel.</p>
USN	<p>No, there is no inherent conflict of interest in the commander's role as a convening authority. In fact, the commander's responsibilities for his people and as a convening authority 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. The commander's role as a convening authority administering a fair and impartial military justice system 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. A fair military justice system is an essential tool that commanders, in their role as a convening authority, employ in executing their responsibilities for 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>Under existing DOD policy, many unit commanders are not eligible to serve as convening authorities for sexual assault cases. The Secretary of Defense directed that the initial disposition authority for certain specified sexual assault allegations must be an O-6 or above special court-martial convening authority. This ensures that experienced commanders are making the initial disposition decisions for covered sexual assault offenses. Further, sexual assault cases warranting trial by general court-martial are convened by general court-martial convening authorities (GCMCA), who are generally Navy Flag officers far removed from the units in which the victim and the accused serve. In such cases, the GCMCA receives the case as a result of an Article 32 report being forwarded by a sexual assault initial disposition authority, the GCMCA then receives Article 34 advice from his Staff Judge Advocate, and considers Rule for Courts-Martial 306 factors before making a determination. In most cases, there simply is no relationship between the GCMCA and the victim or the accused.</p> <p>In all cases, convening authorities 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 their responsibilities for their people and for good order and discipline seriously and are committed to eradicating sexual assault, protecting the due process rights of the accused, and</p>

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	holding offenders appropriately accountable.
USMC	See answer to Question 15.
USCG	Question 15 and 18 are the same. This question was answered in Question 15.

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