85. (Services) Please identify all efforts to prevent unlawful command influence in cases involving sexual assault allegations.

USA	Legal training for commanders, including the recognition and prevention of unlawful command influence, has always been an aspect of professional development, beginning with UCMJ training in ROTC and at the United States Military Academy prior to commissioning. Once commissioned, officers assume a quasi-judicial role such as Second Lieutenants occupying platoon leader positions and progressing in available quasi-judicial authorities with each assignment. Legal authorities and responsibilities are taught at every level of professional military education. The officers entrusted with the disposition of sexual assaults, withheld to the O6 (Colonel) Special Court Martial Convening Authority, are required to attend Senior Officer Legal Orientation courses at The Judge Advocate General's Legal Center and School with a focus on the proper handling of sexual assault allegations. General officers, who will serve as convening authorities, are offered one-on-one instruction in legal responsibilities, again with a focus on sexual assault. Judge Advocates are trained on the prevention, identification and remedies at the basic course and throughout their careers. Judge Advocates advising every level of command are expected to be vigilant to recognize, reveal, and take steps to correct the actual occurrence or appearance of unlawful command influence. At both the Department of the Army and the installation level, Judge Advocates review all training materials, publications, and external and internal communications for content that could raise issues of unlawful command influence. Attached as an example of the proactive legal advice required to prevent unlawful command influence: a "TJAG Sends", a message from The Judge Advocate General, following the senior leader SHARP Summit in June 2013. In addition, Army regulations and the Manual for Courts-Martial have specific provisions regarding unlawful command influence and provide guidance to both commanders and Judge Advocates: • Commander's Legal Handbook 2013, The Judge Advocate General's Legal Center and School, United States Army, Chapter 3, Unlawful Command Influence provides specific guidance for commanders. A copy of the handbook can be located at the following web address: www.jagcnet.army.mil/8525799500461E5B/0/A1473A5772D802E385257A5E004587B3/%24FILE/Commanders%20Legal%20HB%202013.pdf • Army Regulation 27-10, Military Justice, 3 October 2011 (currently under revision), emphasizes protecting the accused's right to a fair trial, free from unlawful command influence. • Article 37(a), UCMJ and Rule for Court Martial 104 prohibit unlawful command influence.
USAF	Commanders receive legal training at the Wing Commanders' Course, Squadron Commanders' Course, and throughout their command time from their Staff Judge Advocate (SJA) and servicing legal office. Further, as officers, these commanders

	have received various levels of professional military education which include training and discussions of many of the personnel and command issues they face. These courses include Squadron Officer School as a junior officer, Staff College as a mid-grade officer and War College as a senior officer. In September 2012, the Secretary of Defense directed the services to develop and implement standardized core competencies and learning objectives applicable to pre-command and senior enlisted leader Sexual Assault Prevention and Response (SAPR) training as well as methods for objectively assessing the effectiveness of this training. One of the core competencies for the training is for commanders to recognize their responsibilities during the judicial process. Commanders receive a briefing from the Staff Judge Advocate's office (JA) during their initial orientation period when they assume command. This is followed by regular training and interactions such as quarterly Status of Discipline (SOD) meetings. Issues discussed at SOD IAW AFI 51-201, Administration of Military Justice, para. 13.12, include court-martial and non-judicial punishment processing times, types of offenses and demographic data for closed cases. SOD provides an opportunity for squadron commanders to hear how their fellow commanders handled cases and is an opportunity for the SJA to provide lessons learned and training as necessary.
USN	The issue of UCI is not unique to cases involving sexual assault allegations; and, commanders and senior leadership are alerted to the dangers of UCI, trained to avoid UCI and advised throughout their careers on how to avoid UCI issues by judge advocates assigned as Staff Judge Advocates and legal advisors. Commanders work closely with their Staff Judge Advocates to ensure that their comments or actions do not present either actual or apparent UCI that could affect any particular case or cases. Additionally, senior officers receive 60-90 minutes of training on UCI during the Senior Officer Course. Navy judge advocates receive training on UCI during the Basic Lawyer Course and during Staff Judge Advocate courses. UCI is recognized as the "mortal enemy" of military justice and the military justice process addresses all allegations of UCI. The DOD's campaign to eradicate sexual assault has raised some particular UCI concerns. While commanders and senior leaders may make statements that express a zero tolerance for sexual assault, they must avoid any statement or action that appears to promote or dictate a particular outcome in a specific case or type of case. If statements, actions or policies do appear to raise a UCI issue, the services work to clarify to ensure no adverse impact on a particular case or set of cases. Remedial action may also be taken by commanders and military judges in particular cases to ensure that outcomes in courts-martial are free from actual or apparent UCI. The SECDEF memorandum of 6 August 2013 on the integrity of the military justice system, which followed a statement by the President, is an example of remedial action.

USMC	Staff judge advocates help commanders review and/or draft any comments that they deliver publically to Marines within the unit related to military justice. If a statement is made that is perceived to be UCI, staff judge advocates can assist a commander in issuing a clarifying statement that reinforces the presumption of innocence and the duty of all commanders, members, and witnesses to make their own independent decisions and judgments in every aspect of a military justice case. Notwithstanding these efforts, defense attorneys can also aggressively litigate the issue in front of military judges. See question 84 for an example of how this process worked in the area of sexual assault over the last year.
USCG	The Coast Guard provides pre-command training to every prospective commanding officer on military justice, which discusses unlawful command influence. Moreover, every commander exercising general court-martial jurisdiction receives a headquarters-level briefing on military justice with emphasis on unlawful command influence. On September 18, 2013, the Acting Secretary of Homeland Security issued a memorandum on the topic of the integrity of the military justice system. In that memorandum, the Secretary stressed that the decisions of those involved in the military justice process – convening authorities, military judges, and court-martial members - must be made solely on their independent judgment of what is right based on the facts of the case and the law. See the Acting Secretary Memorandum dated 18 Sep 2013, listed as Enclosure 3. That same day, the Commandant promulgated an all-Coast Guard message that stressed that "every service member involved in the military justice process exercise independent judgment when performing his or her responsibilities under the Code." He added, "To be clear, my expectation of the military justice process is that it be fair and impartial, and that justice be served in every case. I have no desire to see a specific outcome in any case. I direct only that the military justice process be carried out in accordance with the laws of our nation. I expect and require that commanders and convening authorities share that intent." See ALCOAST 441/13, listed as Enclosure 4.

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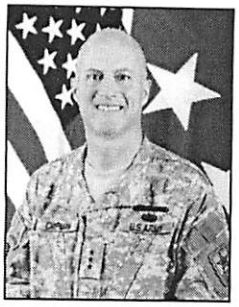

TJAG Sends

A Message from The Judge Advocate General

SHARP Summit

On 10-11 June I attended an unprecedented gathering of senior leaders for the SHARP Summit on Sexual Assault in the Army. The CSA personally led the two-day summit; attendees included the Undersecretary of the Army, Army staff principals, four/three/two-star commanders and their CSMs. The CSA made clear that combating sexual assault is his number one priority and that he believes that the Army risks losing both the respect of the American public and the central role of the commander in the military justice system. I provided two blocks of instruction at this summit – the first on the current environment and our SVP/HQE/TC/DC training programs and the second on checks and balances in Army reporting and adjudication processes.

The problem of sexual assault in our ranks is real – crimes are occurring across our formations, we have commanders and Soldiers who do not set a professional climate of dignity and respect, and we have Soldiers who have been subjected to social or professional retaliation or ostracism for reporting misconduct. The danger of unlawful command influence is also a real concern. As you may be aware, military judges in two Services have ruled that recent statements by senior officials created the appearance of unlawful command influence. Commanders have returned from this summit energized about this important issue. You must ensure that this energy does not improperly put pressure on commanders to prosecute or interfere with the impartial administration of justice.

For SJAs, here's a reminder of what I expect from you in this important area. You should take this opportunity to address the issue of sexual assault with your commanders, but also take the opportunity to remind them of their duty to dispose of cases based on the individual facts and upon their independent discretion. You should also work with your commanders to mutually reinforce our responsibilities under the UCMJ and to support the CSA's 5 imperatives: (1) An emphasis on prevention and compassionate response for victims; (2) Thorough and professional investigation; (3) Climate that allows all Soldiers to reach their full potential and allows us to "see ourselves"; (4) Where appropriate, accountability for individuals, units and organizations; and (5) The central role of the commander.

For those in the defense community, I remind you of your critical role in our military justice system, particularly in this emotionally-charged atmosphere. You are to zealously represent the interests of your client to the best of your ability. The integrity of our system and Soldiers' faith in it depend on everyone fulfilling their responsibilities.

As the Army seeks to establish a climate that promotes dignity and respect, we all have an obligation to guard against unlawful command influence and to protect the rights of victims and accused Soldiers. You must balance the needs of good order and discipline in the command and the rights of the accused to ensure justice is done in every case. In performing your duties, you must be vigilant to recognize, reveal, and take steps to correct the actual occurrence or appearance of unlawful command influence.

DANA K. CHIPMAN
Lieutenant General, USA
The Judge Advocate General

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BY ORDER OF THE
SECRETARY OF THE AIR FORCE

AIR FORCE INSTRUCTION 51-201

6 JUNE 2013

Law

ADMINISTRATION OF MILITARY JUSTICE

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial (MCM), and Air Force Policy Directive (AFPD) 51-2, *Administration of Military Justice*. It provides guidance and procedures for administering military justice. Users of this instruction must familiarize themselves with the UCMJ, MCM, and applicable Department of Defense (DoD) Directives. It applies to individuals at all levels, including Air National Guard (ANG) members and Air Force Reserve Command (AFRC) members. Commands may supplement this instruction only with the prior, written approval of Air Force Legal Operations Agency, Military Justice Division (AFLOA/JAJM), 1500 West Perimeter Road, Suite 1130, Joint Base Andrews Naval Air Facility Washington, MD 20762; DSN 612-4820. This instruction requires the collection and maintenance of information protected by the Privacy Act of 1974. The authority to collect and maintain this information is in 10 U.S.C. §§ 854 and 865. Privacy Act System of Records Notice F051 AF JA I, *Military Justice and Magistrate Court Records*, applies. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF Form 847, *Recommendation for Change of Publication;* route AF Form 847s from the field through Major Command (MAJCOM) functional managers. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual (AFMAN) 33-363, *Management of Records,* and disposed of in accordance with the Air Force Records Disposition Schedule (RDS) located in the Air Force Records Information Management System (AFRIMS).

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13.7.1. Release of Court-Martial Record of Trial. RCM 1103(b)(2) defines a court-martial record of trial. The court-martial record of trial is subject to release determination under the Privacy Act and Freedom of Information Act. Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. A transcript of oral proceedings is not a record until authentication. When releasing records of trial under this paragraph, redact all Victim and Witness Protection Act and Privacy Act protected data, to include the names of victims of sex offenses, the names of children (under the age of 18), and the identity of victims who could be harmed by disclosure of their identity.

13.7.2. Release of Other Military Justice Documents or Records. All other documents or records, including documents which will become part of a record of trial, and including those which are attached to the court-martial record of trial but not made a part of the record of trial under the provisions of RCM 1103 (for example, an Article 32 report and its attachments) are also subject to release determination under the Privacy Act and Freedom of Information Act. However, due regard will be given to the potentially heightened privacy interests of an accused where a case has not been fully adjudicated as well as to whether any exemption, such as those included to protect ongoing deliberative processes or investigative processes should be invoked. Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. When releasing military justice documents or records under this paragraph, redact all Victim and Witness Protection Act and Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity.

13.7.3. Cases Disposed of by Acquittal or Action Other Than Court-Martial. When the charges against an accused were disposed of by an action other than court-martial, or when a court-martial results in an acquittal, due consideration must be given to the likelihood that the accused may have increased privacy interests in the protection of information contained in military justice documents or records. Less serious misconduct, which is handled administratively rather than judicially, generally is not considered of sufficient public interest to outweigh the privacy interest of the individual.

Section 13E—Special Interest Reports (SIRs)

13.8. Reporting Special Interest Cases to HQ USAF. Certain offenses committed by Air Force members generate requests for information within HQ USAF, regardless of the member's grade or disposition by military or civilian authorities. Similarly, an accused's grade itself may generate requests for information, or necessitate HQ USAF knowledge of an alleged offense. SJAs must be sensitive to reporting requirements in this chapter, and make complete and timely reports. Reporting Special Interest cases is a base level responsibility. Reports should be prepared and forwarded within 24 hours of learning of the incident to AFLOA/JAJM by the base legal office prosecuting the case or, if the case is in a civilian court, the base legal office servicing the unit where the accused is assigned. None of the reporting requirements are intended to preclude a commander's complete evaluation of a case before deciding what action, if any, to take.

13.8.1. Officer, Cadet, CMSgt and SMSgt Cases. Regardless of offense, report all investigations into allegations involving officers, cadets, CMSgts, and SMSgts.

13.8.2. Serious Crimes. Regardless of grade, report cases involving the following crimes, including attempts, conspiracies, and solicitations to commit these crimes:

13.8.2.1. homicide;

13.8.2.2. sexual assault;

13.8.2.3. espionage, subversion, aiding the enemy, sabotage, spying, or violations of punitive regulations or statutes regarding the handling of classified information or the foreign relations of the United States;

13.8.2.4. environmental crimes, including civilian felony prosecution;

13.8.2.5. fraternization and unprofessional relationships; and

13.8.2.6. anthrax or smallpox refusals.

13.8.3. Cases with Command or Media Interest.

13.8.3.1. Report any case where the local chain-of-command for the accused or subject would likely provide information about the case to the MAJCOM commander and/or Headquarters Air Force (HAF). SJAs should also work with their respective command post to ensure they are made aware of criminal activity and other legal-related events or incidents reported to higher headquarters via OPREP3 as provided for in AFI 10-206, *Operational Reporting.*

13.8.3.2. Report any other case with potential community reaction, or potential or actual media coverage.

13.8.4. Report Format. Use the Special Interest Report in AMJAMS to generate reports. Ensure the initial report includes a detailed summary of the case by filling in all AMJAMS data fields. Include a thorough description of offenses, dates, UCMJ articles allegedly violated, the number of specifications under each offense, sufficient detail to provide senior leadership with a clear understanding of the facts and circumstances involved, whether media attention is anticipated, and any other unusual or significant features of the case. Identify incomplete facts in the report and follow-up as soon as possible.

13.8.4.1. Ensure sensitive investigative information is not included in the SIR without concurrence of the AFOSI Detachment Commander/Special Agent-in-Charge (SAC) or other investigating agency. See paragraph 13.31 for examples of sensitive investigative information.

13.8.4.2. For matters investigated by commander-directed investigation (CDI), IG or MEO, summarize the allegations, and when final, identify both substantiated and unsubstantiated findings.

13.8.4.3. For cases disposed of by NJP or administrative action (e.g. LOR or LOC), identify the wrongdoing or offenses alleged (e.g. "On (date), Subject served NJP/LOR for...").

13.8.4.4. For cases disposed of by civilian authorities, include information that identifies the court and jurisdiction and summarize the charges, pleas, findings and sentence.

13.8.4.5. If a matter was disposed of without action, explain why.

13.8.4.6. With sexual assault cases, make sure to put whether or not an STC was consulted under the "Pending Offense" subfolder, "Case Information" tab.

13.8.5. When to Report. Submit reports:

13.8.5.1. Within 24 hours after learning of an incident in any of the above-mentioned categories;

13.8.5.2. When a significant event in a reported case occurs after initial reporting. Significant events include disposition of investigation, when jurisdiction is obtained from civilian authorities, preferral of charges, trial, results of trial, Convening Authority action, date Article 15 offered, date Article 15 punishment imposed, and media interest;

13.8.5.3. Continue to submit reports until completion of administrative or disciplinary action, to include the decision whether to file the action in an OSR, or as directed by AF, MAJCOM or NAF legal offices. Exception: in officer cases involving involuntary separation, continue to report until completion of discharge processing.

13.8.6. When updating or reporting initial SIRs in accordance with triggering events listed in the previous paragraph, use the following format for the e-mail subject line as appropriate: (FOUO) NEW SIR: CASE ID # - RANK SURNAME – BASE; (FOUO) UPATED SIR: CASE ID # - RANK SURNAME – BASE.

13.8.6.1. All current event updates to a SIR should be completed no later than the 25th of each month.

13.8.7. AMJAMS Process. All special interest reporting should be accomplished via AMJAMS using the reports located on the AMJAMS reports page. Reporting special interest cases is a base responsibility. Updates should be made after every significant event until final disposition (e.g., Article 15, administrative action, preferral, Article 32, referral).

13.8.7.1. SAF and NAF/MAJCOM SIR buttons are located in the Special Interest Folder of AMJAMS. Click the "Special Interest reporting required" button for all cases listed in the paragraphs 13.8.1 to 13.8.4. The "NAF/MAJCOM SIR" button is selected when a NAF/MAJCOM requires additional reporting not required by this AFI and the information is for use by each individual NAF and MAJCOM.

13.8.7.2. Transmitting SIRs to AFLOA/JAJM. In addition to the requirement in paragraph 13.8.4, updates are made in AMJAMS by going to the AMJAMS Reports page on the web and selecting Special Interest Report. Next, put in the case ID and select case notes and run the report. Save a "pdf" copy of the SIR and send it to AFLOA/JAJM via e-mail to **JAJM.SIR@pentagon.af.mil.**

Section 13F—Reporting Referral of Additional Charges in Cases Pending Review

13.9. Reporting Referral of Additional Charges in Cases Pending Review. If a case is pending review under Articles 66, 67 or 69, UCMJ, the headquarters referring new charges must notify AFLOA/JAJM of the facts relating to the new charges.

Section 13G—Reporting Foreign National USAF Member Cases

USCG Q85

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

September 18, 2013

MEMORANDUM FROM THE ACTING SECRETARY

TO: Commandant, United States Coast Guard

SUBJECT: The Integrity of the Military Justice System

As the Acting Secretary, I want to affirm my expectations for the integrity of the military justice process at the Coast Guard.

Our military justice system must be marked by impartiality and it must preserve the Constitutional and legal rights of every person accused of a crime. Every accused is entitled to the benefit of the presumption of innocence that is the bedrock of our criminal justice system. Every criminal case must be judged by the merits of the evidence introduced at trial, and free from any unlawful influence calculated to interfere with the exercise of the independent personal discretion of court-martial members, military judges, and witnesses.

The Coast Guard has made significant efforts to eradicate sexual assault from its ranks. While I share the Coast Guard's commitment to that end, I do not expect or suggest a specific outcome in any proceeding convened under the Uniform Code of Military Justice. In this regard, I join the Secretary of Defense in reaffirming his and the President's expectation of the fair administration of military justice. Whether a service member has committed a crime shall be determined based on the facts of each case and supported by the law.

To be clear, I expect no specific verdict in any case. I do expect every service member to exercise his or her independent judgment in accordance with the Constitution and the Uniform Code of Military Justice. Likewise, I do not expect any specific punishment for findings of sexual assault, or any other violations of the code.

I count on you to ensure the fair administration of justice throughout the service. My expectation is that convening authorities, military judges, and court-martial members will provide their own assessment and base their judgments and decisions on the individual facts and merits of the cases before them. Moreover, any punishment for sexual assault, or any other offense, shall be appropriate for that case as determined by the fair and impartial deliberation of the members.

Please ensure that this message is widely and immediately disseminated throughout the service.

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FM COMDT COGARD WASHINGTON DC//CCG//
TO ALCOAST
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ALCOAST 441/13
COMDTNOTE 5810
SUBJ: THE INTEGRITY OF THE MILITARY JUSTICE PROCESS

1. Recently, the Acting Secretary of Homeland Security issued a memorandum to me which addressed his devotion to the military justice process. He also stressed that the decisions of those involved in the process must be based solely on their independent judgment of what is right based on the facts of the case rather than on any other interest.

2. I share Acting Secretary Beers devotion to the military justice process. The ability of our commanders to maintain good order and discipline within our ranks through the Uniform Code of Military Justice (UCMJ) is an essential part of our service.

3. In order to make the military justice process work, the UCMJ demands that every servicemember involved in the military justice process exercise independent judgment when performing his or her responsibilities under the Code. Servicemembers must not make decisions based on personal interests or in an effort to bring about a result that he or she believes senior officers expect.

4. To be clear, my expectation of the military justice process is that it be fair and impartial, and that justice be served in every case. I have no desire to see a specific outcome in any case. I direct only that the military justice process be carried out in accordance with the laws of our nation. I expect and require that commanders and convening authorities share that intent.

5. Sexual assault, sexual harassment, hazing, and drug abuse have no place in the Coast Guard. I have said in the past and will continue to reiterate that criminal misconduct by Coast Guard men and women is not acceptable. However, my comments, and those of military and civilian senior officials, in no way indicate an expectation of a specific outcome in any case, and nothing any senior official says should be interpreted as an indication of what a particular result should be in a military justice decision.

6. Commanding officers and officers-in-charge shall ensure that this ALCOAST is read at the next all-hands.

7. ADM Bob Papp, Commandant, sends.

8. Internet release authorized.

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