RFI Responses Relating to Command Climate and Accountability (as of Nov. 18, 2013)

1. **(ALL) What metrics have DoD and/or the Services developed to measure success in combating sexual assault in the military?**

   Please include statistics or other feedback mechanisms that will be used to measure success, and how effectiveness will be measured for:

   1c. Personnel leadership and legal training of commanders and accountability of commanders

DOD	DOD SAPRO We do not currently employ metrics on this item. However, in January 2012, the Secretary of Defense directed an assessment of SAPR training provided by the Military Services to officers selected for command and senior enlisted leaders. • Based on findings of the assessment, the Secretary of Defense directed the Military Services and the USD (P&R) to develop and implement standardized core competencies, learning objectives, and methods of objectively assessing the effectiveness of pre-command and senior enlisted SAPR training. • These core competencies and learning objectives were incorporated in pre-Command and Senior Leadership training courses for classes with start dates after 30 March 2013. The goal of these changes is to enhance commanders and senior enlisted leaders' ability to establish and support SAPR programs within their units. • The Services are developing methods to determine the effectiveness of this training. DoD SAPRO has requested this data as part of its FY13 Annual Report Data Call, due in January 2014.
Army	Legal training for commanders has always been an aspect of professional development, beginning with UCMJ training in ROTC and at the United States Military Academy prior 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. Commanders are tasked with caring for the morale, welfare and safety of all their Soldiers, victim and accused, and they take this Soldier duty seriously. Army professional development training includes accountability as a key aspect of leadership. The Army's leadership instruction is so remarkable that industry and recognized leadership experts (e.g., Warren Bennis) have emulated it. The Army conducts SHARP training during all Pre-Command Courses and Company Commander/First Sergeant Courses. Finally, commanders received local SHARP operational training within 45 day of assuming command. Mentorship throughout a Soldier's career includes not only this formal professional development training on leadership and accountability, but also informal and formal mentoring from superiors as one carries out his or her duties. The Army, through both the

	professional development training and the mentorship, has linked culture/ climate responsibilities and sexual harassment and sexual assault prevention and response to leadership. This is especially true of commanders, as they are responsible for the SHARP Program within their commands. We use surveys, focus groups, assessments, counseling sessions, mentoring sessions, and site visits to evaluate personnel leadership training. These mechanisms help us assess the efficacy of the training, gain insights from students, evaluate whether persons are being trained to standard, and determine where additional work is needed. Commanders also participate in monthly Sexual Assault Review Boards (SARBs) to ensure program services are executed in effective manner, program gaps are identified and addressed, prevention capabilities are improved, and to brief updates on individual cases. The Army requires commanders to conduct command climate surveys in the first few months of assuming command and at periodic points during command. These surveys provide key insights into command climate, areas of risk or concern, and areas in which progress is occurring or is needed. This policy ensures all commanders are monitoring their command climates appropriately. The Army recently directed evaluation reports for Officers and Noncommissioned Officers to evaluate leader efforts to combat sexual harassment and sexual assault. Leaders must address goals and objectives for combating sexual harassment and assault in counseling sessions. (See Army Directive 2013-20, Assessing Officers and Noncommissioned Officers, dated 27 SEP 2013, available at http://armypubs.army.mil/epubs/pdf/ad2013_20.pdf The Army also employs assessments, site visits, surveys, and focus groups to obtain feedback on leaders' and commanders' performance. Additionally, other resources for raising complaints or concerns (e.g., the Inspector General's Office, chaplain, Equal Opportunity Officer, helpline, etc.), and the number of these complaints is also helpful for assessing leaders and commanders.
AF	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 which 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 Judge Advocate (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. JA inspection items related to legal training for Commanders include: 1. SJA required to regularly meet with and to advise commanders on available legal services, disciplinary matters, and the legal sufficiency of actions. (JA Inspection List, #3) 2. SJA required to meet with the wing commander to discuss ongoing cases and military justice related issues. (JA Inspection List, #4) JA can compare inspection results annually to determine whether there are improvements AF wide in compliance with training requirements. DoDI 6495.02, Enclosure 5, provides that commanders must receive training from JA on Military Rule of Evidence 514, victim advocate-victim privilege. Commanders (like all military personnel) receive formal initial and annual feedback from their direct supervisor as well as annual officer performance reports.
Navy	The SAPR portion of the DEOCS includes two questions regarding the perceptions of leadership support for sexual assault prevention and response. The first item stem reads "My leadership promotes a climate that is free of sexual assault". The second item stem reads, "My leadership would respond appropriately in the event a sexual assault was reported." A five-point Likert-type scale ranging from "strongly agree" to "strongly disagree" was used for the perception of leadership support for sexual assault prevention and response items. Items are coded such that a high score indicates a more favorable climate. All commanders are required to ensure the command climate surveys are conducted within 90 days of the CO assuming command, and annually thereafter. Each CO must conduct a face-to-face debrief of their most recent command climate assessment, to include a plan of action and milestones for corrective actions, with their Immediate Superior in Command (ISIC). Command leaders are also held accountable for the organizational climates they foster in their commands via their professional performance evaluations (Fitness Reports). Lastly, commanders are required to notify the first Flag Officer in their respective chain of command when unrestricted reports of sexual assault are received. This oversight by senior officers further ensures that reports are being adequately handled by chain of command of the victim and alleged offender. Command leaders are required to complete all mandatory SAPR-related training (CNO directed, standdown,SAPR-L, etc.) as well as courses (Prospective Commanding Officer, Senior Enlisted Academy) which include modules of SAPR specific information as part of their leadership development. Standardized end of course survey instruments are also used to obtain student feedback and input. Senior Officer Course • As legal training for commanders, the Naval Justice School offers a three-day Senior Officer Course (SOC) that covers numerous subjects in military justice and civil law important to COs, XOs, and OICs in the administration of legal matters. SOCs have been taught since 1955 to thousands of senior officers at various fleet locations.

	Participants regularly give the course outstanding remarks for increasing awareness of current legal issues and promoting efficiency in handling legal matters.
	• Target Audience: The Chief of Naval Personnel requires the course for all O6s en route to command per CNP memo of 4 Sep 12 on Sexual Assault Initial Disposition Authority Training. The course is also open to officers assigned as or reporting to duty as COs, XOs or OICs and other officers O-4 and above with a mission-essential need on a space-available basis.
	• Attendance: In FY13, 1,090 Navy and Marine Corps senior officers attended this course at seven Navy and Marine Corps locations including Newport, San Diego, Norfolk, Pensacola, Quantico, Parris Island, and Camp Lejeune. The numbers have increased in recent years. In FY12, 910 students attended; in FY11, 780 students attended, and in FY10 686 students attended.
	• 4 Locations: In FY14, the course will be offered in Newport (14 offerings), Pensacola (8 offerings), Norfolk (7 offerings), San Diego (6 offerings to include 1 at Camp Pendleton), Parris Island (1 offering), Camp Lejeune (1 offering), and Quantico (1 offering). A complete FY14 schedule can be found in NAVADMIN 236/13.
	• References: course materials are available at this CAC-accessible SharePoint site: https://www.portal.navy.mil/comnavlegsvccom/NJS/SIP/SOC/default.aspx. An electronic copy of the QUICKMAN (Commander's Quick Reference Handbook for Legal issues) is also available on the site.
	• Military Justice Training at the Senior Officer Course:
	  ○ (1) Introduction to Military Justice: Not limited to sexual assault, but provides instruction on key military justice considerations for commanders that is relevant in sexual assault cases to include an overview of the military justice process from investigation to appellate review, mandatory NCIS investigations, courts-martial forums, and differences between the military justice and civilian court systems with respect to self-incrimination, search and seizure, grand jury v. Article 32 hearings, speedy trial, and sentencing.
	  ○ (2) Search and Seizure: Not limited to sexual assault, but provides instruction on search and seizure issues for commanders that is relevant in sexual assault cases to include elements of a Fourth Amendment search, probable cause searches, non-probable cause searches, and inspections and inventories.
	  ○ (3) Self-Incrimination: Not limited to sexual assault, but provides instruction on self incrimination issues for commanders that is relevant in sexual assault cases to include the differences between Article 31b and Miranda rights, custodial interrogations, the exclusionary rule, the voluntariness doctrine, and self-reporting.
	  ○ (4) Court-Martial Procedures: Not limited to sexual assault, but provides instruction on courtmartial procedures for commanders that is relevant in sexual assault cases to include personal and subject matter jurisdiction, reservist jurisdiction, legal hold, double jeopardy, mechanics of convening and referral of charges, types of courts-martial, roles at a court-martial, court-martial members, clemency, and post-trial review.
	  ○ (5) Responsibilities of the Convening Authority: Not limited to sexual assault, but provides instruction on the responsibilities of a convening authority for commanders that is relevant in sexual assault cases to 5 include the accuser concept, unlawful command influence (UCI), apprehension and pre-trial restraint to include the pre-trial confinement review process, speedy trial clock and excludable delay, and pre-trial agreements to include scope of agreements, protections, and suspension v. disapproval of punishment.

	○ (6) Hazing: Does not directly address sexual assault, but provides instruction on hazing for commanders that may be relevant to other misconduct related to sexual assault cases. Instruction is provided on the hazing references, definitions, command responsibilities, and practical examples. ○ (7) Sexual Assault Initial Disposition Authority: Provides instruction to commanders on the Navy and Marine Corps sexual assault initial disposition authority (SA-IDA) withholding policies, collateral misconduct, distinctions among Article 120 offenses, mechanics of withholding and disposition decisions, initial considerations in sexual assault cases, and reporting requirements. ○ (8) Sexual Assault Prevention and Response (SAPR): primarily taught by an area SARC as a guest instructor. It provides training to commanders on SAPR policy, restricted and unrestricted reporting, SAPR personnel requirements, expedited transfers and SAFE kit/records retention, protected communications, and command responsibilities upon notification of an unrestricted report of sexual assault. ○ (9) Victim and Witness Assistance Program (VWAP): Not limited to sexual assault, but provides instruction on the VWAP program for commanders that is relevant in sexual assault cases to include the purpose and application of the VWAP program, victim definition and rights, witness definition and rights, DD forms 2701 to 2706, VWAP and deployed units, and compensation programs for victims.
Marines	See consolidated answer at the top of this question.
CG	

12. (ALL) Please provide any regulations, instructions, directives, or memoranda establishing Service policies for a commander's accountability for preventing and responding to sexual assault.

DOD	DOD SAPRO:
	The SAPR Program regulations, instructions, directives, and memoranda are listed below:
	• DoD Sexual Assault Prevention and Response Strategic Plan provides the strategic approach the Department is pursuing to reduce and eliminate sexual assault. It can be found at www.sapr.mil.
	• DoDD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program January 2012, located at www.sapr.mil, provides the general policy of the SAPR program.
	• DoDI Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Procedures March 2013, located at www.sapr.mil, provides the procedures. The DoDI 6495.02 incorporated Directive-Type Memorandum 11-063, "Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault," December 16, 2011, and Directive-Type Memorandum 11-062, "Document Retention in Cases of Restricted and Unrestricted Reports of Sexual Assault," December 16, 2011.
	• DTM-092, "Defense Sexual Assault Advocate Certification Program (D-SAACP)" with a projected issuance date of November 2013, will provide the procedures for the DoD certification program for SARCs and SAPR VAs. When issued, will be located at www.sapr.mil.
	• SECDEF Directives and Memoranda:
	  o On April 20, 2012 Secretary Panetta directed to withhold initial disposition authority from all commanders with the Department of Defense who do not possess at least a special court-martial convening authority and who are not in the grade of O-6 or higher in certain sexual assault cases.
	  o On September 25, 2012 Secretary Panetta directed the Military Departments to evaluate their pre-command and senior enlisted leader's sexual assault prevention and response training as well as to develop and implement standardized core competencies and learning objectives. This memorandum further required a 2-hour block of instruction and that each Service would provide a SAPR program information and guidance for commanders in a quick reference "Commander's Guide."
	  o On May 6, 2013 SECDEF directed each Service to undertake a variety of actions to prevent and respond to the crime of sexual assault in the DoD. The overall approach included a focus on leaders establishing an appropriate climate and included directives to enhance commander accountability, to improve response and victim treatment, to ensure safety, to conduct visual inspections of DoD workplaces; and to ensure victim's rights. This included elevation of unit climate survey to the unit commander's next higher level of command; and a requirement that each Service Chief develop recommendations on methods of assessing commander performance in establishing proper climates and reporting SAPR principles in their commands.
	  o On August 14, 2013 SECDEF directed implementation of measures to gain greater consistency of effort and to enhance oversight, investigative quality, pre-trial investigations, and victim support. This included specific guidance to commanders to balance the interests of the victim and the accused when determine administrative reassignment or transfer; and direction to establish

	General Officer/Flag Officer oversight of the response to unrestricted reports of sexual assault. ▪ USD P&R is currently drafting a Directive-type Memorandum to comply with the August 14, 2013 SecDef initiative requiring a standardized policy across all the Services that mandates status reports of unrestricted sexual assault allegations and actions taken to the first general/flag officer within the chain of command, without delaying reporting to the relevant military criminal investigation organization.
Army	The Army's sexual assault prevention and response, and commander accountability efforts are influenced and/or guided by Army and DOD policy; DODD 6495.01 (Sexual Assault Prevention and Response Program); Department of Defense Instruction 6495.02 (Sexual Assault Prevention and Response Program Procedures); Department of Defense Sexual Assault Prevention and Response Strategic Plan; Strategic Direction to the Joint Force on Sexual Assault Prevention and Response; Memorandum, Secretary of the Army, dtd 28 May 2013, Ensuring the Quality of Sexual Assault Response Coordinators, Sexual Assault Prevention and Response Victim Advocates and Others in Identified Positions of Significant Trust and Authority; and CSA Sends - SHARP Top 10, dtd 3 July 2013. Army Directive 2013-20 (Assessing Officers and Noncommissioned Officers on Fostering Climates of Dignity and Respect and on Adhering to the Sexual Harassment/Assault Response and Prevention Program) requires leadership address their annual SHARP Program goals. Additionally, Command Climate Surveys are conducted within 30 days of assuming command (120 days for ARNG and USAR), again at six months and annually thereafter. Finally, commanders also participate in monthly Sexual Assault Review Boards (SARBs) to ensure program services are executed in effective manner, program gaps are identified and addressed, prevention capabilities are improved, and to brief updates on individual cases. Specific prevention responsibilities and requirements for commanders at the ACOM, ASCC, DRU, installation, and unit level are at the following URL: http://www.apd.army.mil/pdffiles/r600_20.pdf, Army Regulation 600-20, Army Command Policy, paragraph 8-5k/m/o and include: • Ensuring deployable SARCs (brigade and higher) and UVAs have received required training prior to performing duties. • Ensuring unit level SAPR Program training is conducted annually and documented on unit training schedules. • Advertising the SAPR Program through local means to ensure that Soldiers, Army civilians, Family members, and leaders are aware of the program. • Posting written sexual assault policy statements and victim services resource chart on the unit bulletin boards. Statements must include an overview of the command's commitment to the SAPR Program; victim's rights; the definition of sexual assault; available resources to support victims; and specific statements that sexual assault is punishable under the UCMJ and other Federal and local civilian laws and that sexual assault is incompatible with Army values. • Ensuring Soldiers receive pre-deployment and post deployment training related to the prevention and response to sexual assault. • Emphasizing on sexual assault risks, prevention, and response at all holiday safety briefings. • Continually assessing the command climate through various methods (for example, focus groups, surveys, talking with Soldiers).

	• Conducting periodic assessments of the SAPR Program for program improvement. • Complying with AR 600–8–8 and appoint same-gender sponsors for first-term Soldiers. Additional Army guidance to commanders is provided in SHARP Program Synchronization Order 221-12, dated 23 Jun 12. Commanders must have responsibilities that cannot be delegated to staff and subordinates; responsibilities that place commanders at the center of our system and that can be measured and judged. The Army, like the other services, has moved aggressively to hold commanders accountable for setting a command climate that encourages reporting, deplores conduct that degrades or harasses individuals, and provides a safe environment, free of retaliation, for victims after they come forward. Policy changes to Officer Evaluation Reports, command climate surveys, and the on-going development of metrics to measure objective requirements set for commanders in the processing of allegations and in victim response, will ensure that commanders are held to the highest standard. The SECARMY Directive regarding changes to the command climate policy is in final staffing and should be published in the next week or so. The Army will provide the new policy as soon as it is published. Current Army policy, set forth in AR 600-20 Appendix E-2 stating that "Results are intended for the company commander's use and are not reported up the chain of command," has been superseded by the SECDEF directive of 6 May 2013 that provides for superior commander review of results. The SECARMY Directive will impose requirements beyond those set forth in the SECDEF directive of 6 May 2013. The Army policy will require: • AC Company Commanders conduct initial command climate assessment within 30 days of assuming command, followed by subsequent assessments six months after assuming command, 12 months after assuming command and annually thereafter. • AC Commanders above the Company level will conduct initial command climate assessment within 60 days of assuming command, followed by subsequent assessments 12 months after assuming command and annually thereafter. • Within 30 days of completing the assessment, the requesting commander will brief the next higher command on the results and the action plan to address concerns raised in the assessment.
AF	Please see Tab 8, Acting SecAF's "Enhancing Commander Assessment and Accountability, Improving Response, and Victim Treatment," dated 28 October 2013.
Navy	The Navy continues to evaluate the tools we provide commanders to ensure they can execute their charge of command. In particular, we are focused on improving the development of leadership and character in our leaders on their way to command. Today, all of our leaders complete high-quality, tailored training on sexual assault prevention and response. This training is designed to help leaders identify factors and environment that surround or contribute to sexual harassment or sexual assault, and understand the response requirements when a sexual assault occurs.

While tailored to sexual assault prevention and response, this training is not enough to fully prepare commanders to create an appropriate command climate. The Navy recently instituted a concerted leader development program to guide young officers and enlisted personnel to be effective commanders and senior enlisted leaders. Over the next year, we will advance this program as a cornerstone of our training for future commanders and Senior Enlisted Advisors and leaders.

Because of the inherent responsibility of our commanders, our screening processes to select them are rigorous. They include:

- a formal, command qualification program reviewed and approved by each community flag officer leader (normally, a Vice Admiral)
- professional qualification standards for each selected commander
- an oral qualification board for each candidate in front of former commanders
- a command screen board, led by flag officers
- full training, and acknowledgement of, the "Charge of Command"

Despite the rigors of the selection and training process, we inevitably have failures and must hold commanders accountable for their command climate, their efforts to maintain a safe work environment of dignity and respect; and the good order and discipline of their commands. Today, we do this by requiring commanders to assess their organizational climate at regular intervals, while requiring those with multiple commands under their leadership to monitor the climates of subordinate commands. We also evaluate our commanders (and all officers) in their regular fitness reports (performance evaluations used for determination of advancement) in three areas: Command Climate / Equal Opportunity, Leadership and in written summary, where documentation of poor command climates would be listed. We hold our commanders responsible and accountable when they do not meet acceptable standards.

There are 1,254 command positions in the Navy. In 2012, Navy relieved 11 commanders for personal misconduct and eight commanders were relieved for failure to provide effective leadership; four of these eight were relieved for poor command climate. Statistics for 2013 are still being compiled.

As part of the Navy's accountability process, commanders are required to brief their Immediate Superior in Command and the first flag officer in the chain of command on each sexual assault incident occurring in their command. As part of that brief, commanders evaluate the command climate of the suspect's command, as well as the factors surrounding the sexual assault, such as location and environment surrounding the incident, demographics, and the role of alcohol. Means to prevent further incidents are discussed.

Our Navy four-star flag officers reinforce accountability for command climate by reviewing these "first flag" reports each quarter, including trends, demographics, common features and environments and best practices to prevent sexual assaults. We apply the insights from the reports to adjust emphasis within our SAPR Program. Empowering our commanders while holding them accountable for identifying and implementing change is critical to changing the culture in the Navy and ensuring we successfully a and appropriately prevent and respond to sexual assault across the force.

A series of instructions and other guidance govern specific accountability measures regarding Sexual Assault prevention and response. Summaries are provided below.

Per Navy's current instruction (OPNAVINST 1752.1B, Sexual Assault Victim Intervention), commanders and commanding officers (COs) will implement and support the SAPR program through prevention education using the standardized DoD definitions promulgated for training and education purposes; provide the safest possible physical and emotional Navy environment; and institute and publicize a means of informing the chain of command of situations which may place individuals at risk of sexual assault and provide feedback concerning the final disposition suggestions and complaints.

Additionally, they will ensure the following:

(1) Swift, sensitive and fair response to sexual assault allegations, and when appropriate, prosecution of sexual assault cases;
(2) All allegations of sexual assault within their ranks are referred, as soon as practicable, to NAVCRIMINVSVC;
(3) Disposition of sexual assault incidents is reserved for command with a minimum of special courts- martial convening authority, ensure a consistent response to alleged sexual assault; and
(4) All unrestricted reports of alleged sexual assault that involve victims and alleged offenders who are family members, active duty members, or Reservists on active duty are reported regardless of the military affiliation of the victim or alleged offender. Reports of allegations of active duty members of another Service assigned to a Navy command, regardless of location are also required.

MILPERSMAN 1910-142 - SEPARATION BY REASON OF MISCONDUCT - COMMISSION OF A SERIOUS OFFENSE: Directs processing is mandatory for sexual misconduct - rape, sexual assault, stalking, forcible sodomy, child sexual abuse, possession or distribution of child pornography, incestuous relationships, or any sexual misconduct.

NAVADMIN 019/10 – PERSONAL FOR – SEXUAL ASSAULT SPECIAL INCIDENT: Our Navy four-star flag officers reinforce accountability for command climate by reviewing these "first flag" reports each quarter, including trends, demographics, common features and environments and best practices to prevent sexual assaults. We apply the insights from the reports to adjust emphasis within our SAPR Program. Empowering our commanders while holding them accountable for identifying and implementing change is critical to changing the culture in the Navy and ensuring we successfully a and appropriately prevent and respond to sexual assault across the force.

COs will complete an Initial OPREP-3 Navy Blue or Situational report, continuation/follow-on report (as applicable), and final report documenting official resolution of sexual assault cases. This guidance ensured the first flag officer in their chain of command is not only made aware of every sexual assault, but also is aware of command actions taken to prevent sexual assaults.

NAVADMIN 272/12 - OPNAVINST 3100.6J URGENT CHANGE 3: Directs that COs directly report their assessment in person to the first flag officer in the chain of command within 30 days of receiving a report of sexual assault. The first flag officer will be responsible for tracking all sexual assault offenses under their cognizance.

ALNAV 038/13 - DEPARTMENT OF THE NAVY COMPREHENSIVE VISUAL INSPECTION OF ALL DON WORKPLACES: Required that all DON

	Commanders, Commanding Officers, Officers-in-Charge, and civilian directors direct comprehensive and regular inspections of all workplaces and common access spaces under their control for materials to affect the removal of material that a reasonable person would consider degrading or offensive and document any material discovered during the course of workplace inspections. They also remain responsible and accountable for ensuring compliance with this ALNAV, and must provide clear guidance and intent to those members delegated authority to conduct inspections. NAVADMIN 158/13 - GUIDANCE FOR SEXUAL ASSAULT PREVENTION AND RESPONSE STAND-DOWN directed Commander Engagement All Hands training and reporting by 1 July 2013 for the active duty component and NLT 22 July 2013 for the Reserve component and deployed personnel. NAVADMIN 181/13 - IMPLEMENTATION OF NAVY SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM INITIATIVES: All Commanding Officers were directed to take the following actions: a. Review their compliance with the Navy Equal Opportunity Policy (OPNAVINST 5354.1F, CH-1) and ensure command climate surveys are conducted within 90 days of the CO assuming command, and annually thereafter. b. If not already completed, conduct a face-to-face debrief of their most recent command climate assessment with their ISIC using the Defense Equal Opportunity Management Institute Organizational Climate Survey, to include a plan of action and milestones for corrective actions. ISICs will certify completion via their administrative chain of command. c. Use the Sexual Assault Prevention and Response Commander's Guide in shaping their command program. d. Along with the XO and Command Master Chief, complete the SARC Commander's Toolkit brief with the regional or installation SARC and report completion to their ISIC. e. Review command policies to ensure adherence to requirements regarding the submission of OPREPs/Unit SITREPs and Sexual Assault Incident Data Collection Reports (NAVPERS Form 1752/1). NAVADMIN 216/13 - NAVY PERFORMANCE EVALUATION CHANGES provides guidance on evaluating performance in two areas: Command or Organizational Climate/Equal Opportunity and Military Bearing/Character. These changes should be viewed as complementary and synchronized with the command climate survey outcomes provided to commanding officers and immediate superiors in command. To achieve high marks in these areas, Sailors must demonstrate how they have cultivated or maintained command climates where improper discrimination of any kind, sexual harassment, sexual assault, hazing, and other inappropriate conduct is not tolerated; where all hands are treated with dignity and respect; and where professionalism is the norm.
Marines	• MCO 1752.5B, Sexual Assault Prevention and Response (SAPR) Program • DoDD 6495.01, Sexual Assault Prevention and Response (SAPR) Program • DoDI 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures • SECNAVINST 1752.4B, Sexual Assault Prevention and Response • DoD instructions are available at: http://www.dtic.mil/whs/directives/ • Navy instructions are available at: http://doni.daps.dla.mil/default.aspx • Marine Corps instructions are available at:

	http://www.marines.mil/News/Publications/ELECTRONICLIBRARY.aspx
CG	
CJCS	Provided a copy of the Strategic Direction to the Joint Force on Sexual Assault Prevention and Response, dated 7 May 2012 which is available at: http://www.jcs.mil/content/files/2012-05/050812085404_Joint_Strategic_Direction_on_Sexual_Assault_(7_May_12).pdf

13. (ALL) How does the chain of command affect reporting of incidents of sexual assault?

DOD	DOD SAPRO:
	Commanders and leaders create the climate in which victims choose to report. Victims tell us that they are concerned with a variety of factors in determining when to report a sexual assault crime, including protecting their privacy, obtaining care and counseling of their choice, ensuring they are protected from real or perceived professional or personal retaliation, and ensuring their complaints will be addressed with the utmost seriousness, among others. Commanders and leaders facilitate the reporting of sexual assaults by gaining victims' confidence in our response system when they understand these issues and provide supportive climates.
	
	Victims have a variety of people to whom they can make reports of sexual assault. SARCs, VAs, health care professionals, law enforcement officers, and judge advocates, among others, are empowered and responsible for receiving reports of sexual assault. DoD policy clearly articulates the duties of commanders and requires their support (DoDI 6495.02):
	• "Commander SAPR Response Procedures" (p 34, in Enc. 5):
	  o A unit commander who receives an Unrestricted Report of a sexual assault shall immediately refer the matter to the appropriate military criminal investigative organization, to include any offense identified by the Uniform Code of Military Justice.
	  o A unit commander shall not conduct internal command directed investigations on sexual assault (i.e. no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIOs while attempting to assess the credibility of the report.

Army	The chain of command is critical to setting the appropriate climate in which victims feel comfortable reporting assaults. In June 2013, the Chief of Staff of the Army, General Raymond Odierno, held a summit with his four star, three star, and select two star-command teams to spend two days talking only about sexual assault and making clear that his number one priority is the elimination of sexual assault in our ranks. Amid conflicts world-wide, General Odierno remains committed to this effort, not only directing multiple new initiatives including a victim advisory panel and an in-depth examination of the training and selection of Sexual Harassment/Assault Response and Prevention (SHARP) personnel, but by personally holding sensing sessions with Soldiers and victims on the issue of sexual assault at every installation he visits. This "commander focus" on all aspects of sexual assault – prevention, response and accountability – has had success that can be objectively measured and evaluated. Although the unique aspects of Army culture, the range of tools available in our system, and the scope and scale of our cumulative efforts are unmatched in any community, we can look to civilian society and to our allied forces for benchmarks in our progress. The Army compares very favorably, and has made substantial progress, in reporting and prosecution of sexual assault crimes, while protecting the rights of the

	accused. For reporting, command emphasis has generated a steady rise in the "propensity to report" calculated by the Army Research Institute Gender and Relations Survey. This Army survey, administered in 2012 to a larger population using an accepted gender survey, concludes that female Soldiers reported penetrative sexual assaults (rape, sexual assault, forcible sodomy and attempts to commit) at a rate of 54% and contact offenses (abusive sexual contact, aggravated sexual contact) at a rate of 42%. Due to our sustained efforts, this represents a dramatic increase from the 2009 survey propensity to report of 28%. The survey data is corroborated by a corresponding increase in the raw number of reports. Fiscal Year 2013 data indicates that all the Services, including the Army, will see unprecedented rises in reporting by over 40% from the 2012 rates. Data taken from the DMDC 2012 WGRA Survey corroborates the finding that the vast majority of service members believe that their command has set an appropriate climate for reporting. When asked about their unit leadership's efforts to prevent sexual assault, 94% of male service members and 88% of female service members indicated that their leadership makes it clear that sexual assault has no place in the military. When asked about a climate conducive to reporting, 85% of male service members and 73% of female service members reported that their command did well to create an environment where victims would feel comfortable reporting.
AF	Sexual assault allegations (rape, sexual assault, forcible sodomy and attempts thereof) may only be disposed of by someone designated as a sexual assault initial disposition authority (SA-IDA). As defined by SecDef's 20 April 2012 SA-IDA withhold policy memorandum (Tab 12), a SA-IDA must be an O-6 and designated as a special court-martial convening authority. Sexual assault victims may report to law enforcement, anyone in their chain of command, legal office personnel, a chaplain, a SARC, a victim advocate, or, in the Air Force, a special victims' counsel. With the exception of a SARC receiving a restricted report, any of these people receiving a report of any sexual assault (not just those covered by SecDef's SA-IDA withhold policy) must immediately refer the report to the appropriate military criminal investigative organization (MCIO). Once the investigation is complete, it is referred to the accused's commander and the servicing SJA, who consult to determine the commander's recommendation as to disposition of the case. The commander forwards the case to the SA-IDA with a recommendation as to disposition. As the disposition authority for sexual assault cases, the SA-IDA may act on the case or send the case back to the lower commander to take action within that commander's authority. Once the case is returned to the lower commander, he may prefer charges against the accused and forward the case to the SA- IDA with a recommendation as to disposition (i.e. referral to special court-martial, appointment of an investigating officer (IO) to conduct an Article 32 investigation). Once any Art. 32 investigation is complete, the Art. 32 IO makes his

	recommendation, and the SJA provides Art. 34 advice, the SA-IDA may forward the case to the General Court Martial Convening Authority (GCMCA), the first general officer in the chain of command, with recommendation that the case be referred to a general court-martial. The GCMCA, with the advice of his own SJA, then makes the decision as to whether to refer the case to GCM. Under a new Air Force policy signed by the Acting SecAF on 17 June 2013, regardless of the SA-IDA's disposition decision, she must inform the GCMCA within 30 days of her initial disposition decision. Additionally, once final disposition of the case is complete, the GCMCA must sign the written report of command action required for AFOSI to close out the investigation.
Navy	In the Navy, there are two reporting options for victims of sexual assault: restricted and unrestricted. There are multiple means available for Sailors to make reports at all commands – afloat or ashore. Sexual assault reports can be made to personnel as described below inside or outside the victim's command and can be confidential, as desired by the victim. Restricted reports are kept confidential; an investigation is not initiated, and the command is notified that an assault has occurred with no identifying information on the victim or suspect. Victims can make restricted reports to Sexual Assault Response Coordinators (SARCs), Victim Advocates (VAs), medical personnel, or by contacting the DoD SafeHelpline (877-995-5247) or online (https://www.safehelpline.org/), 24 hours per day, 7 days a week. SARCs, VAs, and SafeHelpline personnel ensure victims understand their reporting options and available resources. Victims who make restricted reports will still receive medical treatment, including a Sexual Assault Forensic Examination, counseling services, victim advocacy support, chaplain support, and legal assistance. Unrestricted reports provide victims the same support services as restricted reports. These reports are fully investigated by the Naval Criminal Investigative Service (NCIS) and, in the most egregious cases (involving rape, sodomy, sexual assault, and attempts thereof), are reviewed for prosecution by an O-6 or above commander with disposition authority for sexual assault cases. Victims who desire to make an unrestricted report are encouraged to report sexual assaults to a SARC or VA, medical personnel, command leadership, judge advocate, base police, master at arms, NCIS or civilian law enforcement as soon as possible after the incident. The decision to make a restricted or unrestricted report rests with the victim; a victim can make a restricted report and later change to an unrestricted report. Once a victim files an unrestricted report, investigation and reporting requirements are mandated. The Navy trained every Sailor on reporting procedures during our Sexual Assault Prevention and Response for Leaders and Fleet training. This training was completed in April 2013. The Navy also implemented policies to ensure victim safety and support following an unrestricted report of a sexual assault. For example, victims may request an expedited transfer to another command or duty station. Additionally, commanders may issue military protective orders to order a military suspect to have no contact with the victim, temporarily transfer the accused pending resolution of the

	case, or place the accused in pretrial confinement.
Marines	Commanding Officers and Senior Enlisted Advisors play critical roles in prevention and response, as they are charged with setting a climate of trust and confidence in which sexual assault will be taken seriously and victims will be treated with dignity and respect. Last year the Marine Corps saw a 31% increase in reporting (FY12 Annual Report), which speaks directly to the growing confidence Marines have in their Commanding Officers and the Marine Corps regarding this crime. This year, we have approximately an 85% increase in reporting, further demonstrating increased trust and a positive climate of dignity and respect. Once they are made aware of an unrestricted report, Commanders are required to release a Serious Incident Report within six hours of notification. Additionally, they are required to complete a SAPR 8-Day Brief, which is submitted to HQMC SAPR and briefed to the first General Officer in the chain of command. The 8-Day Brief serves as a victim services checklist, ensuring commanders provide all required services to victims. Commanding Officers and Senior Enlisted Advisors set a climate that promotes reporting by establishing conditions that are non-permissive to all misconduct. By setting a professional climate in the unit and work space, leadership puts preventative measures in place and instills trust for potential victims that leadership will not tolerate misconduct and will take complaints seriously.
CG	
CJCS	Commanders are the cornerstone of unit mission success and discipline and are held responsible for the climate within the unit. The unit climate impacts whether or not a victim feels comfortable and confident in unrestricted reporting. Without exception, DoD policy requires commanders to forward all unrestricted sexual assault allegations to the Military Criminal Investigative Organization for independent investigation. When reports are made outside the chain of command, either in a restricted or unrestricted capacity, the commander of the victim is informed. For a restricted report, the commander does not know the details of the report or the identity of the victim, but encourages the SARC to ensure that he or she is receiving the appropriate treatment and care. If the report is unrestricted, the commanders of both the victim and the accused are informed of the allegation, and provide oversight for the investigation process and in ensuring that the interests of both the victim and the accused are upheld. A respectful command climate encourages reporting from victims -- all commanders are well aware that the onus is on them to create the type of command climate that is intolerant of service members who commit these heinous acts, and reassures victims that they will be respected.

14. (ALL) What impact would removing prosecutorial authority from the chain of command have on sexual assault reporting, and what tangible evidence supports this conclusion?

DOD	DOD OGC: There is no empirical data to support statements by critics that removing prosecutorial authority from the chain of command would increase sexual assault reporting. In the existing DoD chain of command structure, reports of sexual assault have increased by over 50% since 2007. The Department believes that the increase is due in part to the prevention and response measures that have been implemented and an increase in victim confidence. Recent testimony by officials from Canada, United Kingdom, Israel, and Australia, whose military justice systems charge lawyers with prosecutorial decisions vice commanders, reveals that those countries do not have empirical data to support or refute the assertion that removing prosecutorial discretion from the commander increases sexual assault reporting. The United States military provides multiple reporting options outside of the chain of command. DOD SAPRO: The Department is not aware of any study, model or data that would accurately predict the impact of removing prosecutorial authority from the chain of command on sexual assault reporting. However, there is substantial data that the chain of command can have a positive impact on the reporting of sexual assault. The Department's sexual assault reporting data indicate that in FY13, there was an unprecedented increase in the reports of sexual assault. In fact, the Department is currently tracking a dramatic 46% increase in reports of sexual assault through the 3rd Quarter of FY13 when compared to the 3rd Quarter of FY12 (our previous highest year on record). The Department assesses this increase is not due to a sudden increase in crime. Rather, over the past 6 years, there has been a relatively stable prevalence of sexual assault – about 6% of women and 1% of men have indicated experiencing some form of unwanted sexual contact in the year prior to being surveyed. Given these conditions, this increase in reports in FY13 is more likely related to an increase victim confidence as a result of improved victim support services, sustained senior leader engagement, enhanced investigative and legal capabilities, and a better-educated force. This is tangible evidence that the chain of command can make a positive impact on the reporting of sexual assault, an outcome that alternative proposals have not demonstrated either in theory or in practice.
Army	There is no statistical or tangible evidence to support the claim that removing the Commander from disposition of sexual assault would increase reporting. Data from the Department of Defense Workplace and Gender Relations Survey establishes that the overwhelming reason victims (70%) do not report is because they ". . . do not want anyone to know." The next two reasons cited, (66%) feeling "uncomfortable making a report," and (51%), not believing that the report "would be kept confidential," also deal with privacy concerns. This survey data is corroborated by sensing sessions and Army Red Team investigations. When Soldiers do cite a fear of retaliation for failure to report (47%), Soldiers are referring to "the person who did it

	or their friends," not the commander. Data from our allies, in which the commander's disposition role has been degraded or eliminated, also does not support the conclusion that removing the commander from disposition has any impact on reporting. Our allied forces are a decade behind the U.S. military in measuring and studying reporting rates. What is clear is that any survey data available indicates that our allies have high rates of incident and issues with underreporting. In June 2013, the Australian Minister of Defence stated that initial analysis of the first of its kind gender relations survey concluded that only 20% of sexual assault victims reported the offense. In the United Kingdom, a survey conducted in 2006 found that 70% of female service members experienced unwelcome sexual behavior. Of the 13% who reported experiencing a sexual assault, only 5% chose to report that assault to their command. A 2008 survey conducted on the Israeli Defense Forces found that 1 in 7 female service members reported being sexually harassed. Regardless of the data, one conclusion that all our allies agree upon is that changes in the role of the commander in military justice had no effect on reporting or prosecution of sexual assault offenses.
AF	There is no tangible evidence to allow the Air Force to predict the impact of removing prosecutorial authority from the chain of command on sexual assault reporting. To be clear, such a change will not change the reporting options a victim has in the military. In addition to anyone in their chain of command, victims can report to law enforcement; legal office personnel; medical personnel; a chaplain; a SARC; a victim advocate; or, in the Air Force, a Special Victims' Counsel. All of those reporting options exist today and lie outside the chain of command. Having said that, relieving commanders of their prosecutorial authority does not impact sexual assault reporting. In fact, it could have a detrimental effect by negating any positive effects commanders have on promoting sexual assault reporting. As indicated in the annual DoD SAPR report, the vast majority of sexual assault victims are in the grades of E1-E4. When a commander prefers charges against an accused, it can have the effect of validating a victim's accusation, sometimes even when there is no conviction. For junior enlisted members of the armed forces, their commander is often the most senior person they know in the military. They often do not know who their commander's boss is, or who the JAG is. Their job, mission, and daily life in the military revolves around their local chain of command, which usually does not extend beyond their commander. If the commander loses the ability to "validate" the victim's accusation by preferring charges, it could reasonably have the effect of discouraging sexual assault reporting.
Navy	The Department of Defense 2012 Workplace and Gender Relations Survey, supports the conclusion that a concern for privacy, not fear of retaliation, is the primary reason victims fail to report sexual assaults. The overwhelming reason cited by female victims who do not report (70%) is that they ". . . do not want anyone to know." The next two reasons identified also relate to privacy concerns, not retaliation. The

	majority of women (70%) actually state they "would feel free to report sexual assault without fear of reprisal to a large extent." In other words, privacy is the overriding concern – not fear of retaliation. Even if certain victims of sexual assault did fear retaliation from their commander, they have several options for reporting that do not require a reporting to their commander or anyone in their chain of command. They may report the assault to civilian or military law enforcement, specially trained victim advocates, chaplains, judge advocates, or health care providers. They may also report crimes through a process that allows the allegation to remain confidential while providing the victim the services they need to deal with their trauma. Studies of systems that have removed the prosecutorial authority from the chain of command could not draw a correlation between their new system and any increased (or decreased) reporting by victims of sexual assault. There was no statistical or anecdotal evidence that removing commanders from the charging decision had any effect on victims' willingness to report crimes. Similarly, there have not been any studies to examine the impact of the changes on prosecution rates, conviction rates, or processing times. The Department of Defense 2012 Workplace and Gender Relations Survey and the evidence from our allies show, there is no evidence that removing prosecutorial authority from the chain of command will have any impact on sexual assault reporting.
Marines	The Marine Corps is not aware of any empirical evidence that demonstrates a proven correlation between removing the prosecution authority from the chain of command and sexual assault reporting. The most relevant source for data regarding this correlation would be from our Allies who have in some manner removed the commander from prosecution decision for sexual assaults. At the September 24, 2013 RSP session, representatives from Canada, the United Kingdom, Israel, and Australia testified that they have no evidence that removing the commander from military justice affected sexual assault reporting. They were unable to say if reporting increased or decreased because of the change in the commander's role. The Marine Corps views victim reporting as a bridge to both victim care and accountability. To that end, the efforts of Marine commanders over the last year have created an environment that encourages victim reporting, both restricted and unrestricted. In FY13, under the policies and direction of the Commandant's Sexual Assault Campaign Plan, the Marine Corps saw approximately an 85% increase in overall reporting. Approximately 10% of this reporting involved events that occurred prior to the Marine entering active duty. Of the remaining reports, approximately another 15% involved events that occurred over one year prior to the actual report. This shows that a significant number of the reports made by Marines last year involve Marines who trust the Marine Corps of today more than they trusted the civilian sector, or the Marine Corps of one year ago. As Marine commanders continue to be heavily involved in all aspects of sexual assault prevention and response, we expect that victims will continue to come forward and be comfortable with reporting. This is based on what recent surveys tell

	us about why victims do not report. The Department of Defense 2012 Workplace and Gender Relations Survey (WGRA) reported that 73% of female victims did not report because they "do not want anyone to know." Although fear of reprisal has often been cited as the reason military victims do not report alleged sexual assaults, the WGRA also found that 64% of female Marines said they "would feel free to report sexual assault without fear of reprisal to a large extent." The Marine Corps understands that privacy is the leading reason victims choose not to make a report and will continue to use its commanders to create and maintain a climate of dignity and respect for all victims, and making them feel more comfortable with making a report. With no evidence that removing the commander from the prosecution decision will lead to the positive result of increase reporting, the Marine Corps has significant concerns about the effect of such a change on the administration of military justice. The Marine Corps has by no means "won" the fight against sexual assault, and there is still much to be done, but the Marine Corps is making good progress in the areas of prevention and response. The worst thing that could happen at this time is to make a policy change that reverses the current positive momentum and gives victims a reason to not report. One such reason would be a military justice system that is inefficient and/or unable to successfully prosecute cases at the trial level that will survive appellate scrutiny. The current proposal to remove commanders from the initial disposition decision in certain offenses would create two parallel systems of justice that would require significant extra resources. For specific information on the extensive resource costs of removing the commander from the prosecution decision, please see the answer to Question 20.
CG	
CJCS	Removing the prosecutorial authority from the chain of command will diminish the commander's authority over discipline within the joint force. The military has always been organized with the commander retaining the utmost authority over the unit, to ensure its operational readiness and discipline such that the unit may perform the riskiest and most violent of tasks. This change is extremely risky, as it represents a revolutionary overhaul of the principles underlying the militwy justice system and would require wholesale ·revision of both the Uniform Code of Military Justice and the Manual for Courts-Martial. Reporting rates are based on victims' trust that their commands, including their peers and junior level leaders, will provide them with the resources they need, and that they will be treated with the utmost respect. The commander is best positioned to ensure that such a command climate exists, and when it does not, he or she must be held accountable. Based on the substantial increase in reporting over the first three quarters of FYI3, it appears that current initiatives to instill that trust are working. An overhaul of prosecutorial authority at this point runs the risk of turning the system on its head, just as we are making headway in addressing this problem.

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	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. 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. 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. 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 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. The Department has recently put in place important additional requirements to achieve a higher level of system accountability: • 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.
Army	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. 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 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.
AF	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. Because unit discipline is inherent in the commander's relationship with his personnel, there is no conflict between that relationship and appropriate disciplinary measures.
Navy	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. 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. 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.
Marines	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 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. 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. 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. 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. 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.
CG	
CJCS	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.

16. (ALL) If a potential conflict of interest exists for commanders in these cases, what mechanisms can and do the Services employ to ensure appropriate response to sexual assault allegations?

DOD	DOD OGC: Typically, under Rule for Courts-Martial 306, charges may be disposed of by dismissing them, forwarding them to another commander for disposition, or referring them to court-martial. R.C.M. 306 discussion. Under Article 22 of the UCMJ, if any such commanding officer is an accuser, he or she may not serve as a convening authority and the court shall be convened by a superior competent authority. Even absent such a conflict, a superior competent authority may choose to withhold disposition authority from a subordinate and instead exercise it himself or herself. Except in the unusual situation where charges are dismissed after a court-martial has begun, neither dismissal of charges nor nonjudicial punishment for a serious offense bars the same or another convening authority from later referring charges for the same misconduct to a court-martial. See Manual for Courts-Martial, Analysis, App. 21, R.C.M. 306. A convening authority will be disqualified if he or she is an accuser, has a personal interest in the outcome of the case, or has a personal bias towards the accused. United States v. Davis, 58 M.J. 100 (C.A.A.F. 2003), or when the convening authority has an inelastic attitude in the performance of his or her post-trial responsibilities. Id. (citing United States v. Fernandez, 24 M.J. 77 (C.M.A. 1987)). Please refer to Service specific regulations for Service-specific procedures to transfer a case to a different convening authority when it is impracticable for a convening authority to act on a case. DOD SAPRO: See answer to Question 15. The Department is continuing to make the command structure even more robust to prevent and respond to sexual assault. • Independent Investigations. Investigations are conducted independently and outside the influence of the chain of command. Commanders do not conduct investigations of sexual assault cases. By DoD policy, all sexual assault complaints must be referred to a Military Criminal Investigative Organization (Army Criminal Investigations Division, Naval Criminal Investigative Service, Air Force Office of Special Investigations) for an independent investigation. A commander has no discretion as to whether to refer a sexual assault complaint to criminal investigators; they must. • Elevated Disposition. The results of sexual assault investigations are provided to senior commanders in the grade of O-6 or above, who then are responsible for taking appropriate actions. • Sexual Assault Oversight Reports. The best practices of the Services are being standardized into a common practice across the Department wherein the first General or Flag Officer in the chain of command will provide oversight of the system response within 30 days of a report of sexual assault. The commander of the victim and/or the subject will be responsible for making these reports.

	• Case Management for Unrestricted Reports of Sexual Assault. Once an Unrestricted Report is filed, the installation commander is responsible for the monthly case management of that case. The installation commander or deputy installation commander chair the Case Management Group on a monthly basis to review individual cases, facilitate monthly victim updates, and direct system coordination, accountability, entry of disposition and victim access to quality services. This responsibility may not be delegated. The installation or lead Sexual Assault Response Coordinator serves as the co-chair of the CMG. • Special Victims Advocacy Program: Establishment of a special victim's advocacy program to provide legal advice and representation to victims throughout the justice process will provide further support to victims and serve as another mechanism for ensuring proper response to reports of sexual assault. This program has been piloted by the Air Force since January of 2013 and the Departments of the Navy and Army have reached initial operating capability on 1 November 2013. • Command Climate Assessments: Climate assessments of the human relations environment as well as sexual harassment and sexual assault standards in units are assessed by mandatory climate assessments. These are provided to the next senior commander in the unit commander's chain of command to facilitate the accountability process. • Commander Evaluations: New policies fielded by the Services now direct supervisors to hold commanders accountable for creating appropriate command climates in their units. This direct assessment of unit commanders will provide a powerful tool to enforce standards across the military. • Expansion of SARCs and SAPR VAs: A victim of sexual assault in the military is never required to report an incident within the chain of command or directly to his/her commander. Restricted and Unrestricted Reports of sexual assault can be made to Sexual Assault Response Coordinators and Victim Advocates who are assigned at all locations or are available where our members serve. • DoD Safe Helpline: The DoD Safe Helpline is an anonymous and confidential crisis intervention helpline for members of the DoD community. Since 2011, the DoD Safe Helpline has provided a safe and secure system of support for victims of sexual assault and ensured that survivors, family members and friends have access to appropriate resources 24 hours a day, seven days a week, from anywhere in the world.
Army	The Army has consolidated the response to Questions 16 and 19: In general, conflicts of interest can be either actual or perceived. Commanders at all levels of command deal with both issues as they arise. Certainly a commander can be faced with a "perceived" conflict of interest. In the cases of actual conflict of interest, for example the commander is a witness to an offense, the Manual for Courts-Martial (MCM) and military jurisprudence sets out

	limitations and disqualifications for how that commander may act within the overall court-martial process. See, e.g., Rule for Courts-Martial 504. It is very common for a commander to be the victim of an offense or principle witness to an allegation such as failure to obey a lawful order or disrespect, in such a case, that commander may function as an "accuser" within the meaning of the MCM, but would be disqualified from acting as a convening authority and would have to forward the case to a superior commander for disposition without recommendation. As allegations move up the chain of command to more senior commanders, in general, the greater the degree of separation between the accused and the commander acting on the case, or alternatively the commander and the victim in a case. In cases of sexual assault, the initial disposition authority has been reserved to at least the brigade (O6) level commander with approximately 3,000 to 5,000 Soldiers in the command. It is likely that commander has little or no personal knowledge of either the accused Soldier or the victim of an offense. Even then, the final disposition authority will likely be a division level commander (O8 or two star general) with the authority to refer a case to a general court-martial authority. A division commander has approximately 10,000 to 15,000 Soldiers in the command and is generally even more removed from personal knowledge of either the accused Soldier or the victim of an offense. The movement of a case up a chain of command is accompanied by legal advice all along the way. Generally, charges are not preferred, let alone forwarded up the chain of command, without legal analysis and input from varying levels of judge advocates. It is very likely that an actual conflict of interest would be identified by all of the parties before the case reaches the final disposition authority. One of the very first "mechanisms" which comes into play in the resolution of an actual conflict of interest is the integrity of the commander involved. Commanders are selected for the few and cherished command billets, not only because of their demonstrated skills and successes, but also for the moral character and leadership they have demonstrated. Integrity is a personal characteristic considered in the selection of a Soldier for a command billet. It is likely that in a discussion with a legal adviser, the commander will self identify an actual conflict of interest in the case and ultimately will forward the case to a superior commander for disposition. Also, should an actual conflict of interest be disclosed at anytime throughout the court-martial process up to the time of initial action post-trial by the convening authority, there are numerous mechanisms built into the MCM – including Article 60, UCMJ – to allow resolution of that conflict, these include supplemental discovery, motions at anytime during the process, writ appeals, recusal of specific commanders from certain actions or authority, or post-trial hearings. The issues of "perceived" conflicts of interest are largely fact specific. While within the military justice system as a whole, the perception of a conflict of interest is usually raised by the defense or the accused alleging some conflict (personally bias, unlawful command influence, which would prevent a specific commander from taking action (referral, assignment of resources, production of witnesses, etc.) in a case. In those cases, the defense is able to litigate the issue of perceived conflicts and seek specific

	relief (withdrawal of the referral, change of venue, disqualification of a convening authority, etc.) from a court. When a perceived conflict of interest is raised by a witness or victim in a case, the judicial recourse is generally not available, but redress must be sought directly from the commander in question, from a superior commander within the chain of command, through the trial counsel, through the Staff Judge Advocate, through the Victim Advocate, through the Victim Witness Liaison, now through the Special Victim Counsel, through the Inspector General's office, by filing an Article 138 complaint, by contacting any number of civilian representatives in either the Legislative or Executive branches, or by alleging the criminal offense of maltreatment of a subordinate by a commanding officer. Commanders are acutely aware that both either superior commanders, members of their units, and the American people hold individual commanders accountable for the decisions they make, including those related to military justice and victim support.
AF	There are several safeguards built into the military justice system to prevent commanders from responding inappropriately to sexual assault allegations: i. SecDef initial disposition authority withhold for sexual assault allegations – On 28 June 2012, Secretary Panetta instituted a policy that all allegations of rape, sexual assault, forcible sodomy, and attempts thereof must be referred to the first O-6 or higher in the chain of command who is also a special court-martial convening authority. The accused's unit commander may not make the initial disposition decision. ii. Mandatory consultation with SJA – Commanders must consult their SJAs before disposing of sexual assault allegations. Furthermore, under Article 34, UCMJ, a case may not be referred to a GCM without first receiving written advice from the servicing SJA that a) the specification alleges an offense, b) the specification is warranted by the evidence, and c) the court-martial would have jurisdiction over the offense. iii. Complaints against commanders unde r Article 138, UCMJ – Any military member who a) believes he/she has been wronged by his/her commander, b) seeks redress by that commander, and c) is refused redress, may complain to any superior officer. That superior officer must then forward the compla int to the GCMCA over the subject of the complaint. The general officer in receipt of the complaint must then investigate the complaint and, as soon as possible, report the findings to the Service secretary. iv. Inspector General – Airmen who feel they have been negatively affected by their commander's violation of a rule (for example: failure to forward a sexual assault allegation to the SA-IDA) may complain to the IG office, who, upon confirmation of the complainant's standing to make the complaint and the IG's jurisdiction over the issue, will investigate the complaint.
Navy	The Navy requires that all unrestricted reports of sexual assault be reported up the chain of command. Commanders are required by order to notify the Naval Criminal

	Investigative Service (NCIS) of all unrestricted reports of sexual assault so NCIS can initiate an independent investigation into the allegations. In addition to the required initial and periodic update operational reports submitted via naval message through the chain of command, commanders must personally advise the first Flag officer in their chain of command after any unrestricted report of sexual assault, ensuring senior level visibility on allegations and on case resolution. Further, in cases where victims feel uncomfortable reporting the alleged assault to their chain of command (for example, where the alleged offender is a senior person at the command) the victim has numerous other reporting options. These options include reporting the alleged sexual assault to the DoD SAFE Helpline, the Sexual Assault Response Coordinator (SARC), a victim advocate (VA), the Naval Criminal Investigative Service (NCIS), a Victims' Legal Counsel, a chaplain, civilian law enforcement, etc. In addition, after making a report of sexual assault, the victim can request an expedited transfer from the command.
Marines	See answer to Question 15.
CG	
CJCS	If there is a conflict of interest in a case, the UCMJ directs that the commander absolve him or herself from the case. It automatically goes up the chain to the next commander for disposition. If a conflict of interest comes to light, and the commander does not recuse him or herself, then that issue will be subject to litigation by the prosecution or defense at trial.

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	DOD OGC: 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. DOD SAPRO: 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.
Army	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.
AF	a. 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. 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 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.
Navy	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.
Marines	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.
CG	
CJCS	No, potentially the opposite could occur. Commanders would have an important tool 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.

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	DOD OGC: See answer to Question 15. DOD SAPRO: See answer 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. 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.
Army	See answer to Question 15.
AF	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 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.
Navy	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. 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. 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. 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 holding offenders appropriately accountable.
Marines	See answer to Question 15.
CG	
CJCS	See answer to Question 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.