

Debunked: Fact-Checking the Pentagon's Claims Regarding Military Justice



In July 2013, at the height of a contentious debate in the Senate over legislation to create an impartial military justice system in which military prosecutors, instead of commanders, make decisions about which cases are sent to trial, the Pentagon provided misleading and unsupported claims to Congress to block reform.

On behalf of the Pentagon, Admiral James Winnefeld testified before Congress that the military would “have fewer prosecutions” if such decisions were removed from the chain of command. Adm. Winnefeld cited a handful of sexual assault cases from 2010 to 2013 where, he claimed, civilian prosecutors “refused” to prosecute and commanders subsequently “insisted” those cases be sent to court-martial. In a follow-up letter, Adm. Winnefeld claimed there were 93 such cases across the Armed Forces.

An analysis of underlying Army and Marine Corps case documents obtained by Protect Our Defenders (POD) through a Freedom of Information Act request reveals that, **contrary to the Pentagon's claims, civilian prosecutors did not decline many of the cases cited by the Pentagon.** POD also found **no evidence that any case was prosecuted at the “insistence” of a commander.**

Our Findings:

POD's report provides an in-depth review of the case files turned over by the Pentagon. It reveals exaggerations and distortions of the facts underlying the Pentagon's claims and places the “93 cases” in context – debunking the argument that commanders are more effective at prosecuting sexual crimes than military prosecutors or more protective of victims of sexual assault.

- Out of 81 cases, **there was not one example of a commander “insisting” a case be prosecuted.** In each case, military investigators or military attorneys requested the case from civilian authorities.
- **In two-thirds of cases, there was no sexual assault allegation, civilian prosecutors never declined the case, or the military failed to prosecute for sexual assault.**
- Conviction rates for sexual assault were **significantly lower than claimed.**
- Sentencing decisions were **arbitrary and unpredictable.**
- **Contrary to the Pentagon's claims, the vast majority of cases did not involve a military sexual assault prosecution after a civilian prosecutor declined the case.**
- For each of the cases that went to court-martial **a military prosecutor agreed with that decision.**

Despite lacking a valid foundation, **the Pentagon's inaccurate claims about the “93 cases” were cited by at least four Senators in explaining their opposition to fundamental reform.**

The Bottom Line:

Ultimately, **the “93 cases” cherry-picked by the Pentagon represent less than 1% of the 12,232 sexual assault reports the military received during the same time period**—most of which the military chose not to prosecute. Furthermore, the Pentagon's own data show **there were at least 145 cases in 2013 alone where civilian or foreign authorities prosecuted a service member after a military sexual assault report.**

This disingenuous effort on the part of the Pentagon served only to distract from the continued failures of the command-based military justice system. The current system places commanders in the untenable position of administering justice despite being hampered by inherent conflicts, biases, and the lack of the training and experience required to make good prosecutorial decisions. These cases only further illustrate the necessity of creating a functional and conflict-free system of justice.