

Generals Expected on Stand, in Jury for 1-Star's Sex Assault Case

By Joe Gould
Brig. Gen. Jeffrey Sinclair, soon to face a military trial on forcible sodomy and other misconduct charges, has mounted a double-barrelled counteroffensive more commonplace in high-profile civilian defense than in the military. In the courtroom, Sinclair's legal team has filed motions accusing the government of seizing emails on his government computers in violation of his constitutional rights and exerting illegal pressure to prosecute Sinclair. Lawyers representing Sinclair asked a military judge to force prosecutors to turn over any emails related to the case sent or received by former Defense Secretary Leon Panetta. Outside court, his public relations team has launched a website called sinclairinnocence.com

and Twitter account @SinclairFriends

that have sought to shift attention from Sinclair onto the prosecution and Sinclair's main accuser. In an interview with Army Times, Richard Scheff, the lead defense attorney and a former federal prosecutor, acknowledged Sinclair's teams have been aggressive. "It is an aggressive defense, but appropriately so," said Scheff, a former federal prosecutor in Pennsylvania and chair of the law firm Montgomery McCracken. "We don't file a motion, we don't take a position unless we feel factually or legally we ought to win." Upon the start of Sinclair's court-martial July 16 at Fort Bragg, N.C., Scheff intends to further respond to the charges in the case, which include forcible sodomy, indecent acts, violating orders and adultery. (Alcohol and pornography possession charges against him were dropped.) The case is also noteworthy for the amount of brass it is expected to attract in the jury box. The pool from which the jury will be selected includes generals with one to three stars. At an evidentiary hearing for Sinclair in November, prosecutors presented testimony about his conduct with five women who were not his wife, including officers who served under his direct command. The charges involve alleged activities when he was in Afghanistan, Iraq, Germany and at installations in the U.S. Sinclair was deputy commander in charge of logistics and support for the 82nd Airborne Division in Afghanistan before being relieved in May during the criminal investigation. He has been on special assignment since then at Fort Bragg. The female captain at the heart of the case said she carried on a three-year sexual relationship with Sinclair, a father of two. The admission to adultery, a crime in the military, could end her career. She testified that when she tried to end the relationship, Sinclair threatened her and, on two occasions, physically forced her to perform oral sex. A 27-year Army veteran, Sinclair faces life in prison if convicted on the most serious offenses. It's rare for an Army general to face court-martial. There have been two cases in recent years. Scheff intends to show that Sinclair and his accuser shared a "purely consensual," though inappropriate, relationship, which ultimately fell apart. Watershed moment

The defense witness list includes character witnesses and high-ranking generals. Among them, Lt. Gen. James Huggins, Sinclair's former commander, is expected to testify. Others who may be called to testify include Gen. Dan Allyn, commander of Forces Command; Maj. Gen. Jeffrey Colt, Fort Bragg deputy commander; Lt. Gen. Peter Vangjel, Army inspector

general; Lt. Gen. Curtis Scaparrotti, director of the Joint Staff; and Lt. Gen. David Quantock, the provost marshal general. "Everybody I've talked to about this case says they don't remember any instance where a general officer has been court-martialed in a case like this, under these circumstances," Scheff said. "It's a unique set of circumstances." In June, the Pentagon published a report showing a rise in known sexual assault cases, and suggesting as many 26,000 military service members faced unwanted sexual contact but might not have reported it. Meanwhile, the military saw a string of embarrassing cases over the past year, including Air Force commanders who granted clemency to two officers convicted of sexual assault, and Sinclair's case. Attention and pressure in Congress over whether the military's handling of sexual assault is effective culminated in the Senate Armed Services Committee rejecting legislation proposed by Sen. Kirsten Gillibrand, D-N.Y., which would have sidelined military commanders in sexual assault cases. The committee approved a plan that subjects commanders to a review process if they choose not to prosecute a sexual assault case. President Obama's recent statements on sexual assault in the military have affected other courts-martial, according to published reports. In May, Obama said, "If we find out somebody's engaging in this, they've got to be held accountable — prosecuted, stripped of their positions, court-martialed, fired, dishonorably discharged. Period," he said. According to published reports, Obama's statement led a Navy judge to rule that two sailors accused of sexual assault can't be punitively discharged if found guilty. The decision is now under appeal. In court, Scheff argued Sinclair would not be able to receive a fair trial. He cited Obama's comments and the promotion of an Air Force lieutenant general, Susan J. Helms, to four-star general that has been blocked by U.S. Sen. Claire McCaskill, D-Mo., as another example, the Fayetteville Observer reported. Helms is reportedly under fire for overturning an Air Force officer's sexual assault conviction, something she was allowed to do under military law after reviewing the evidence against him. Scheff, in the interview with Army Times, noted that Army Chief of Staff Gen. Ray Odierno said combating sexual assault and harassment within the ranks is the Army's "No. 1 priority." The current climate surrounding military sexual assault, Scheff said, is "white hot." "Can Gen. Sinclair get a fair trial under these circumstances? Can a panel of general officers fairly decide this case, given that they have been directly told by Gen. Odierno this is the number-one priority in the military and they're personally accountable for it?" he said. If the government loses, it might bolster the impression that it cannot effectively prosecute sexual assault cases. "My personal view, which may or may not be borne out, is the stakes are high for the Army, because no matter what the result is, the Army will look bad in this case," Scheff said. The public factor

Greg Rinckey, a military attorney who is not affiliated with the case, said in the charged environment surrounding sexual assaults, it makes sense for Sinclair's team to reach out to the public. "Normally, I would say that that is not a very smart move for military justice cases, but in the climate we're in, it might not be a very bad idea," Rinckey told Army Times. "You hear that he's been charged with all of these indecent acts and then what it comes down to is a 'he said, she said' case of adultery. And the question becomes whether it was forcible or consensual sodomy." Instead of the forcible sodomy allegation, it focuses attention on the lesser crime of adultery and may leave the impression that the case is not so clear-cut. That, in turn, may capitalize on a backlash against the military's crackdown on sexual assault. "There's a lot of people in the military outraged both ways about the sexual assault controversy," Rinckey said. "There's a [military sexual assault] problem, but there are people who feel we're going down the other route of it becoming a witch hunt." Both Sinclair's defense and public relations team have accused prosecutors of accessing "thousands of pages of privileged emails between Sinclair and his defense attorneys; Sinclair and his wife; and Sinclair and his pastor," according to sinclairinnocence.com. During the first day of evidentiary hearings, prosecutors admitted to receiving privileged communications but said it was unintentional and that they had avoided viewing them. Airing the accusation online paints the picture of a legal process that is unfair, Rinckey said, which could work to sway public opinion

to Sinclair's side.