

Obama's Comments Could Have Long-term Effect on Sex Assault Cases

By Chris Carroll President Barack Obama's call last month for strict punishments for military sexual assault — and a military judge's ruling that those comments from the commander in chief crossed the line — will likely have immediate impacts on sexual assault prosecutions, military legal experts said. Navy Judge Cmdr. Marcus Fulton issued the ruling last week in two sexual assault cases just as controversy over the military's allegedly lax handling of such cases reached a boiling point in Congress, where legislators writing next year's defense authorization bills sparred over whether commanders should control prosecutions for sexual assaults within their chain of command. In a pretrial ruling, Fulton ruled out punitive discharges for two defendants if convicted, citing "evidence of unlawful command influence" by Obama when he told reporters in May, "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." Starting now, the unlawful command influence argument will begin popping up in cases throughout the armed forces, military defense attorney Greg Rinckey predicted. "If I'm the defense counsel, I'm going to be raising this case," he said. "I think a defense attorney is ineffective if he doesn't at least raise this." Eugene Fidell, who teaches military law at Yale University and is a former president of the National Institute of Military Justice, said that even if Obama was only trying to make a strong statement to the general public, the comment from the ultimate commander of U.S. troops had the effect of "poisoning the well" in military sex crime cases. "What the president has done here is establish a command climate for the entire armed forces with his ill-advised comment," Fidell said. Rinckey said some commanders might have a hard time disregarding Obama's words when deciding how to handle a case. "It's one thing to say people should be held accountable for their actions, but another to say what should happen to them," Rinckey said. "This was coming from the President, and it was specific." Because the ruling came from a trial judge, it sets no precedent that applies in other cases, Fidell said. But judges and attorneys are certain to read the ruling carefully and consider the arguments, he said. It's too early to tell whether the impact of the ruling will be short-lived, or whether it will gather steam and come up in appeals cases and elsewhere, he said. One thing is certain, Fidell said: The ruling will add to the general confusion over how to deal with the problem of sexual assault in the military. "I'm sure people at the Pentagon were groaning when he made his comments at the press conference, because this kind of (court) decision is to be anticipated when something like this is said," Fidell said. Pentagon statistics indicate the problem of sexual assault has grown sharply in recent years, but military leaders and some politicians are deeply split over whether the trend means that radical changes are needed in the Uniform Code of Military Justice. A bipartisan group of senators pushed for a provision in the 2014 National Defense Authorization Act that would take sexual assault and other serious crimes out of the chain of command and put prosecution in the hands of independent military attorneys. But the measure was defeated by a 17-9 vote by the Democrat-controlled Senate Armed Services Committee, while leaders of the Republican-led House of Representatives blocked the introduction of a similar amendment on the House floor.

