

Tully Rinckey PLLC's Greg T. Rinckey discusses the reprimand handed down to Brig. Gen. Jeffrey A. Sinclair

Sinclair reprimanded, fined; case likely to reignite battle over military justice

[caption id="" align="alignnone" width="620"] Brig Gen. Jeff Sinclair arrives to the Fort Bragg courthouse, for his sentencing hearing, Wednesday, March 19, 2014, in Fort Bragg, N.C. Sinclair, who was accused of sexually assaulting a subordinate, plead guilty to lesser charges in a plea deal reached with government prosecutors.[/caption]By Jennifer HladAn Army general who once faced life in prison for sexual misconduct with a subordinate ended up with a fine and a reprimand, a verdict that surprised military justice watchers and left unanswered many questions about the role of command influence in criminal cases. One of the most high-profile sexual misconduct cases in years ended Thursday when a military judge at Fort Bragg gave Brig. Gen. Jeffrey Sinclair a formal reprimand and ordered him to forfeit \$5,000 a month in pay for four months. Sinclair was allowed to remain in the military, keep his pension and avoid jail time under a plea deal which dropped the most serious charges of sexual assault, "open and notorious" sex, and threatening to kill the accuser and her family. Instead, Sinclair pleaded guilty to mistreating a female captain with whom he maintained a three-year relationship and misusing a government credit card to pursue the affair, among other lesser charges. Sinclair was not given the officer's equivalent of a dishonorable discharge, a dismissal. If he had been dismissed, he would have lost all retirement pay and benefits. But he will still go before a grade determination board that will decide at what rank he will be allowed to retire. Greg Rinckey, a Washington attorney and former Army judge advocate general, said the sentence was "mildly surprising" but "in the realm" of an appropriate sentence for the offenses to which he admitted. Yet the case is likely to reinforce arguments by critics that the military justice system is flawed and especially incapable of handling sexual offenses involving subordinates. "This case has illustrated a military justice system in dire need of independence from the chain of command," said Sen. Kirsten Gillibrand, who sponsored legislation to remove sexual offense cases from the chain of command. John Altenburg Jr., a Washington lawyer who served as the deputy judge advocate general for the Army from 1997 to 2001, said that even with the plea bargain, Sinclair could have received jail time. Before the sentence was announced, Altenburg said an appropriate sentence would have been dismissal, which is the officer equivalent of a dishonorable discharge, and several years' confinement. "He shamed the entire officer corps and he's a disgrace to the uniform," he said. "He undermines all senior officers in the military by what he's done." In the military judicial system, plea deals put a cap on the maximum punishment a defendant can receive, and they must be agreed to by the defendant and convening authority. However, the judge does not see the agreed-upon maximum punishment until after a sentence has been delivered. Once the judge hands down the sentence, he or she reads the maximum sentence agreed to in the plea bargain, and the defendant receives the lesser of the two punishments. The plea agreement, unsealed Thursday, called for Sinclair to serve no more

than 18 months in jail, but the judge's punishment was much lighter. "Some people will say he got the officer discount," while an enlisted soldier may have gotten a few months' worth of confinement, Rinckey said. "That's always the big issue that we see spring up ... and that's a valid point." Overreach and influence

A string of high-profile cases has fueled the ongoing debate about how the military handles sexual assaults and how best to reform the military justice system. But the Sinclair trial is muddier, with details that don't fit the framework of previous cases. Military judge Col. James C. Pohl last week ruled that the Army exerted unlawful command influence when Lt. Gen. Joseph Anderson, the commanding general at Fort Bragg at the time, turned down a plea deal for Sinclair before the trial began. Pohl's ruling, which followed revelations that advocates for the accuser suggested that not pursuing the case would look bad in the current political climate, opened the door for a new plea deal that Sinclair and a different general agreed to earlier this week, which included dropping the charges of sexual assault and "open and notorious" sex. In return, Sinclair pleaded guilty to mistreating the captain with whom he had a three-year affair and misusing a government credit card to pursue the affair, among other charges. Command influence is inherent in the military judicial system. Military commanders determine whether to prosecute their troops and sign off on plea bargains and sentences. But unlawful command influence, or when a commander says or does something to influence his subordinates regarding the outcome of judicial proceedings, is "the mortal enemy of the military justice system," said Rinckey. Unlike the cases that raised the public and congressional consciousness about sexual assault in the military, the unlawful command influence in the case appeared to be working against Sinclair, rather than for him. "I think the whole [political] atmosphere that has been permitted to occur has made it very, very difficult for people to think straight on this subject," said Eugene Fidell, who teaches military law at Yale Law School. "This was a train wreck." Fidell supports a proposal by Sen. Kirsten Gillibrand, D-N.Y., to remove prosecution authority in serious cases away from the victim and defendant's military commander and give it to an independent military prosecutor. The plan earlier this month failed to meet the threshold to overcome a filibuster threat in the Senate. And though Fidell and other legal experts believe the outcome of the Sinclair trial may well have been the same, regardless, he said having that judicial independence would have impacted public confidence in the way military justice is administered and "the system would have been spared a black eye."