

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 1**

9. Services: What impact on trial practice would you anticipate if a “strict liability” standard was applied to sexual assault allegations involving trainer/trainee and/or senior/subordinate relationships? What impact would such a change have on organizational discipline and effectiveness?

USA	<p>The enactment and implementation of a strict liability standard concerning sexual acts or contact between trainers and trainees would not have any foreseeable adverse effect upon trial practice in the Army. Army policy already strictly prohibits any relationship not required by the training mission between personnel that are permanently assigned to a training installation and trainees undergoing initial entry training. Training commands and the United States Army Recruiting Command are also authorized to publish supplemental regulations that further proscribe similar conduct within their respective commands. As such, Army commanders may already charge and punish trainers who engage in inappropriate relationships with trainees, without regard to the mens rea of the accused or the purported consent of the trainee to the relationship. Additional statutory proscriptions of this sort are not necessary.</p>
USAF	<p>AFI 36-2909, <i>Professional and Unprofessional Relationships</i>, and AETCI 36-2909, <i>Recruiting, Education, and Training Standards of Conduct</i>, set forth a strict liability standard as currently written. These regulations provide clear standards of prohibited behavior, which ensures good order and discipline throughout the force. However, expanding strict liability to encompass all trainer/trainee and/or senior/subordinate relationships may have many unintended implications and further complicate already complicated cases. For example, not every interaction between cadets at the United States Air Force Academy (USAFA) should be considered unprofessional. Similarly, the definition of the trainer/trainee or senior/subordinate relationships could be defined too broadly to cover the informal on the job training that happens across the AF every day.</p> <p>At USAFA upper class cadets may be a trainer of or a mentor to a lower class cadet. Also, cadets fill cadet leadership positions at USAFA, including a full cadet command structure. So long as an upper class cadet does not have an unprofessional relationship with a freshman, a sexual or romantic relationship may otherwise be allowed for those in leadership or trainer positions under the current rules. Another example would be married military couples who are of different ranks due to differing promotion cycles. In most cases, this is not an issue within the current regulations; however, if we put a strict liability standard in place for senior/subordinate relationships these couples could inadvertently be caught in the middle of the new law.</p> <p>As the addition of a strict liability standard within Article 120 would provide an increased maximum penalty, an increased mandatory minimum penalty, and increased collateral consequences, we urge caution in pursuing this approach. A strict liability standard, if adopted, must be carefully drafted to appropriately criminalize conduct consistent with the magnitude of the infraction. The AF is satisfied with its current approach of criminalizing this behavior via existing UCMJ articles. We welcome the opportunity to comment on any specific legislative</p>

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	<p>proposal to improve the UCMJ.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> - AFI 36-2909, <i>Professional and Unprofessional Relationships</i> http://static.e-publishing.af.mil/production/1/af_ja/publication/afi36-2909/afi36-2909.pdf - AETCI 36-2909, <i>Recruiting, Education, and Training Standards of Conduct</i> http://static.e-publishing.af.mil/production/1/aetc/publication/aetci36-2909/aetci36-2909.pdf
USN	<p>The specific impact of such a standard can only be surmised. For example, strict liability may have a deterrent effect; members who are informed about the specific facts and circumstances of some relationships charged under a “strict liability” theory may nullify the government’s case; mandatory minimum sentences or collateral consequences may increase this risk; and, strict liability may result in less reporting of this particular type of offense.</p>
USMC	<p>The Marine Corps already has a strict liability General Order that prohibits all trainer/trainee sexual relationships within its Training Command (see enclosure (3f)). Additionally, the Navy and the Marine Corps prohibit fraternization through the U.S. Navy Regulations, which go beyond the Article 134 fraternization charge and prohibit all relationships between officers and enlisted and it also prohibits relationships between officers and relationships between enlisted when they may 1. Call into question a senior’s objectivity; 2. Result in actual or apparent preferential treatment; 3. Undermine the authority of a senior; or 4. Compromise the chain of command. If a senior engaged in sexual relations with a subordinate, officer or enlisted, the four factors listed above would clearly be met and the senior would be strictly liable for an orders violation. Extending this strict liability to a strict liability for a sexual assault and an automatic conviction for sexual assault with all of the attendant collateral consequences would be inappropriately severe. The senior/subordinate or trainer/trainee relationship is strong evidence creating a sexual assault by fear or threat theory or a bodily harm theory since it is usually offensive for a senior/trainer to inappropriately touch a subordinate/trainee.</p> <p>ENCLOSURE(3.f) Training Command General Order 01-03 (01 Oct 2003)</p>
USCG	<p>As for trainer-trainee relationships, a strict liability offense already exists under Article 92(1), UCMJ, and covers a very broad range of Coast Guard members outside those in the company commander role. A strict liability offense under Article 120 would essentially duplicate an ability to prosecute that already exists. However, strict liability would provide an opportunity to use the Article 120 offense in appropriate cases to secure a more severe sentence than can be achieved through use of the Article 92 offense for violation of a lawful general order.</p> <p>A strict liability offense for relationships between a senior and subordinate outside the training environment could, depending on how it was constructed, have profound and disruptive consequences. Not all interpersonal or even romantic relationships between persons of different grades are coercive. At present, approximately ten percent of the members of the Coast Guard are married to other Coast Guard members or members</p>

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	<p>of another service. In many of those relationships there is a difference in grade between the spouses. The Coast Guard has policies that regulate interpersonal relationships and these policies strike a balance between prevention of exploitation, maintenance of good order and discipline, and accounting for the fact that romantic relationships will develop between members of the service. A strict liability offense criminalizing sexual activity based solely on difference in rank could proscribe many existing and entirely consensual relationships that comply with existing service policies.</p>
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