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HOUSE ARMED SERVICES COMMITTEE

**STATEMENT  
OF  
MAJOR GENERAL DANIEL J. LECCE  
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS**

**BEFORE THE**

**HOUSE ARMED SERVICES COMMITTEE  
SUBCOMMITTEE ON MILITARY PERSONNEL**

**CONCERNING**

**“EXAMINING THE ROLE OF THE COMMANDER IN  
SEXUAL ASSAULT PROSECUTIONS”**

**ON**

**2 APRIL 2019**

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## **INTRODUCTION**

Madam Chair Speier, Ranking Member Kelly, and distinguished Members of the Subcommittee, thank you for the opportunity to testify today.

The past 15 years have seen the Uniform Code of Military Justice (UCMJ) undergo significant changes. These changes were necessary to safeguard victims' rights, ensure commanders were aware of their responsibilities, and guarantee counsel were qualified to handle complex sexual assault cases. The Military Justice Act of 2016, contained the most sweeping reforms to the UCMJ since its inception. Like all the Services, the Marine Corps is in the midst of implementing these changes.

My remarks today will begin with a discussion of Marine Corps sexual assault prevention and response measures, followed by an explanation of specialized training for Marine Corps judge advocates. In addition, I will describe the structure of the Marine Corps legal community and how that structure facilitates response mechanisms within the Marine Corps. I will then address the importance of retaining the commander in the military justice system. Finally, I will address the Marine Corps coordinated efforts over the past two years in addressing all forms of retaliation, including ostracism and bullying, which are of particular concern as these forms of misconduct often occur via social media. All of these efforts are individually and collectively focused on preventing sexual assault through increased awareness, intervention, victim support, reporting, thorough investigation, and the imposition of just accountability.

## **SEXUAL ASSAULT PREVENTION**

Sexual assault is a stain on the honor of every Marine and the eradication of sexual assault, through training, is a top priority for the Marine Corps. The Marine Corps conducts comprehensive and specialized training across all ranks to ensure that all leaders have a clear

understanding of sexual assault prevention. This training promotes leadership action within the scope of each leader's responsibility. For example, Marine Corps "*Take A Stand*" training for Non-Commissioned Officers (NCOs) focuses on leadership action specific to NCO roles and responsibilities. *Take A Stand* training builds skills and characteristics primarily focused on the prevention of sexual assaults, such as effective communication techniques, empathy, by-stander intervention, and the fostering of healthy relationships.

Marines of all ranks receive annual training on the laws and policies governing sexual assault, reporting options, and retaliation. Sexual assault prevention training was recently enhanced to include small-group discussions and practical application exercises. Additionally, Marine Corps commanders receive specialized training on sexual assault prevention and response, as described below.

### **SEXUAL ASSAULT RESPONSE**

Judge advocates in the Marine Corps play a prominent and important role in assisting commanders in responding to allegations of sexual assault. The education, training, and qualifications judge advocates obtain is critically important in responding to sexual assault allegations.

*Ensuring Expert Litigation Training.* Sexual assault cases are complex and require experience and expertise. The Marine Corps ensures expert litigation of sexual assault cases through both manning and training. Legal services, including litigation support, is provided through four Legal Services Support Sections (LSSS), each responsible for a geographic region. To litigate sexual assault cases, each region is able to capitalize on specialized resources, such as Regional Trial Counsel, Complex Trial Teams, Regional Trial Investigators, and Civilian Litigation Attorney Advisors.

The Marine Corps strives to develop and maintain skilled litigators. Central to this effort is our Master of Laws (LL.M.) degree program for criminal law. There are currently 62 Marine judge advocates with an LL.M. in criminal law. These Marines hold key leadership billets across the trial services, defense services, and victims' legal counsel organizations. Board-selected judge advocates receive their criminal law LL.M. from the Army's Judge Advocate General's Legal Center and School (TJAGLCS) or a civilian law school accredited by the American Bar Association. Judge advocates who obtain an LL.M. in criminal law receive the Additional Military Occupational Specialty (AMOS) of 4409, identifying them as uniquely qualified to serve in supervisory military justice billets and complex litigation billets wherein they handle special victim cases. Marines are eligible to pursue an LL.M. in criminal law as either a captain or a major, but only Marines serving in the grade of major and above are awarded the AMOS. This ensures that these judge advocates have a high level of maturity and experience—approximately 10 years of service for a major—in addition to specialized education.

The Marine Corps also assigns an AMOS to military judges. The military judge AMOS 4411 is awarded to Marines who are screened and certified by the Judge Advocate General of the Navy and are graduates of the Military Judge's Course at TJAGLCS. The AMOS ensures those performing the duties of military judge possess the requisite education, experience, and temperament, while also allowing for more effective tracking, assignment, and career development.

*Prosecution of Sexual Assault Cases.* Sexual assault cases are among the most challenging cases to prosecute. Due to the complexity of prosecuting sexual assault cases, the Marine Corps established a multi-disciplinary team to handle sexual assault allegations.

All trial counsel (TC) must meet the minimum requirements for Special Victim Investigation and Prosecution (SVIP) before being detailed to prosecute a sexual assault case. The minimum requirements a TC must have are:

- At least 6 months of services as a TC;
- Have prosecuted a SPCM as lead counsel, or a GCM as Assistant TC;
- Completed the Naval Justice School Article 32 Officer course;
- Served as Assistant TC during a special victim case;
- Attended an intermediate level trial advocacy training course; and,
- Received a recommendation from their leadership.

Each Regional Trial Counsel (RTC), who is the senior prosecutor within a given geographic region, also maintains a Complex Trial Team (CTT) built to prosecute the most complex sexual assault cases. The CTTs are comprised of SVIP-qualified attorneys, a senior legal services chief, a legal administrative officer, and a Regional Trial Investigator (RTI). The RTIs are law enforcement experts imbedded into the prosecution offices for the purposes of facilitating the prosecutors' continuing investigations and communication with Military Criminal Investigation Organizations (MCIOs). The CTT plays an important role not only for the prosecution of complex cases, but also for the mentorship of junior judge advocates.

Each region also benefits from the advice and guidance provided by Civilian Litigation Attorney Advisors (LAA). LAAs are civilian attorneys who possess extensive experience and expertise in the field of prosecuting special victim cases. The LAAs are stationed across the Marine Corps and each LAA is assigned to an RTC. The LAAs collaborate with TCs on the preparation of case analysis memos, charging documents, witness interviews, and affirmative and responsive government motions. They also help identify expert witnesses and help organize evidence to improve case presentation. Additionally, the LAAs work closely with the RTC and Marine Corps Trial Counsel Assistance Program (TCAP) to develop training and education programs for Marines seeking SVIP qualification.

TCAP is a program run from Judge Advocate Division at Headquarters Marine Corps, led by a major holding an LL.M. in criminal law. The mission of TCAP is to assist and train TCs on the full range of prosecution tasks, including pre-trial investigation, general trial advocacy, post-trial actions, and professional responsibility. Trial Counsel have 24/7 access to TCAP personnel and the TCAP web portal. TCAP also conducts an annual week-long SVIP training event focused on the best practices for prosecuting sexual assault at court-martial.

*Victims' Legal Counsel (VLC).* The Marine Corps established its Victims' Legal Counsel Organization (VLCO) in 2013 to provide legal representation to qualifying victims. The VLCO is comprised of 18 active duty full-time judge advocates and is headed by an O-6 judge advocate who serves as the Officer-In-Charge (OIC). Assisting the OIC is the Deputy OIC and four supervisory Regional Victims' Legal Counsel (RVLC). These counsel are distributed across the same four LSSS regions as their TC and defense counsel counterparts.

Marine Corps VLCs attend the Special Victims' Counsel Certification training at either TJAGLCS or the Air Force Judge Advocate General's School (TJAGS). Marine VLCs also receive specialized training on representing child victims, attend the annual VLCO training symposium, and participate in local quarterly training. In addition, VLCs have the opportunity to attend other military and civilian training courses throughout the year, including courses at the National Advocacy Center, the National Computer Forensics Institute, and the Naval Justice School. The VLCO also provided victim-specific legal training during Judge Advocate Division-directed MJA16 training, including instruction on the changes in victims' rights and training on Article 6b of the UCMJ, the Privacy Act, and Military Rules of Evidence 412 and 513.

Selection of Marine Corps VLCs includes a thorough nomination, screening, interview, and vetting process. This process satisfies the Department of Defense requirement that individuals

considered for VLC positions undergo an “enhanced screening” process before selection, including a review of the nominee’s military record and background to ensure that the nominee does not have a disqualifying investigative or criminal record.

VLCs provided legal services to approximately 713 victims during FY18, including initial counseling and guidance. Of these victims, approximately 85% were victims of sexual assault, while approximately 15% were victims of other crimes, including domestic violence. The VLCO assisted approximately 655 and 661 victims in FY17 and FY16, respectively.

*Defense Services.* The American criminal justice system is based upon fundamental fairness to all involved in the process. Like its prosecutorial counterpart, the Marine Corps Defense Services Organization (DSO) provides legal services through the employment of teams of defense counsel (DC) located at each installation.

The Defense Counsel Assistance Program (DCAP) is the primary source for training Marine Corps DCs. A major possessing an LL.M. in criminal law leads DCAP, along with two civilian LAAs. The DCAP directly supports DCs in the field and advises on complex motions and best practices. DCAP maintains a secure website available to all personnel assigned to the DSO, this website includes a discussion forum where counsel can post questions and provide feedback in real-time, a motions database, copies of court rulings, standard forms and advice, and a variety of trial advocacy tools and templates.

DCAP also maintains a training program requiring counsel to attend formal week-long training events, such as Defense Counsel Orientation, Basic Trial Advocacy, and Defending Sexual Assault Cases courses. These Marine Corps specific training efforts are supplemented through civilian trial advocacy courses offered by the National Criminal Defense College, the Trial Lawyers College, and the National Association of Criminal Defense Lawyers. This training program ensures

DSO judge advocates possess the knowledge and experience needed to provide high quality representation in complex sexual assault cases.

*Integrating Legal Resources in Responding to Sexual Assault.* All members of the Marine Corps legal community are integrated in appropriate stages of the sexual assault response process.

Whether the initial report is restricted or unrestricted, the Marine Corps will assign a VLC to ensure victims are advised on and able to assert their legal rights. In the case of unrestricted reports, the Staff Judge Advocate (SJA) advises the convening authority on command legal responsibilities related to providing support for victims and ensuring a fair and impartial military justice process for alleged offenders.

When advising a commander, the SJA receives input from the SVIP trial counsel, the Senior Trial Counsel, Regional Trial Counsel, and LAA. This team will provide factual detail and analysis for all sexual assault cases through consultation and completion of a Case Analysis Memorandum (CAM). The purpose of a CAM is to enable and enhance the advice of the SJA to a convening authority on the disposition decision through careful evaluation of the evidence in a case and potential charges. A CAM analyzes the type and strength of evidence in a particular case. In March 2018, the Marine Corps made significant improvements to the CAM process, which closely mirrors the practices and standards employed by federal civilian and state prosecutors. A CAM is required in all cases involving death, infliction of grievous bodily harm, or any sex offense. Additionally, the CAM must record the victim's preference regarding jurisdiction and disposition.

Protecting victims is an integral part of a commander's responsibility. All sexual assault response coordinators and victim advocates are required to inform victims on resources available to report retaliation, to request a transfer, and to request a Military Protective Order. Additionally, the Case Management Group (CMG), led by each installation commander and comprised of the



victim's commander, the unit's Sexual Assault Response Coordinator, the victim advocate, an NCIS representative, the SJA, the VLC, and a senior TC, meets monthly to address any concerns about retaliation or other victim concerns. Finally, VLCs have been instrumental in proactively working with commanders on behalf of victims to assist in eliminating retaliation by advocating for clients.

### **ROLE OF THE COMMANDER**

The commander is ultimately responsible and accountable for the morale, welfare, good order, and discipline of his or her unit. This responsibility and accountability extends to every aspect of the command, including warfighting readiness and effectiveness and the discipline of the unit.

Marine Corps commanding officers are chosen through a rigorous selection process, based on merit and a career of outstanding performance. Commanders are entrusted with the Marine Corps' greatest asset, the individual Marine. Commanders must instill trust and confidence that offenders will be held accountable, victims will receive full support, and the military justice process will be fair and just. The commander is invested in ensuring due process for both victims and the accused.

Marine Corps commanders receive training at the Senior Officer Course and the "Cornerstone: The Commandant's Combined Commandership Course (Cornerstone)." The Senior Officer Course is provided by staff from the Naval Justice School located in Newport, RI. This training is open to company commanders, battalion- and squadron-level (and higher) legal officers, and senior enlisted Marines. During the three days of the course, attendees receive numerous hours of focused legal instruction, including at least two hours devoted to responding to sexual assault cases.

In addition, Marine Corps commanders also attend Cornerstone. This course is offered twice a year and attendance is mandatory for commanders either prior to or shortly after assuming command. During Cornerstone, the attendees receive a three hour block of instruction on legal issues, to include updates regarding victims' rights and military justice. The period of instruction is divided into a one-hour block of classroom instruction followed by a two hour block of scenario-based discussion led by a colonel (O6) and assisted by senior judge advocates in the rank of lieutenant colonel (O5) or major (O4).

The Military Justice Act 2016 (MJA16) represented a sea change to the military justice system, bringing significant change to the court-martial process. Many of these changes involved the enhancement of existing protections for victims throughout the military justice process. During 2018, the Marine Corps legal community completed a phased-training plan which included 24 hours of in-person instruction on the MJA16 changes. The training included significant instruction focused on protecting victim's rights, as well as preventing and punishing retaliation. Further, all staff judge advocates were required to train General Court-Martial and Special Court-Martial convening authority on changes to the law. A few of the significant MJA16 changes are: The creation of Article 132, criminalizing retaliation; a provision in Rule for Court-Martial 405 imposing greater restrictions on how evidence regarding a victim's sexual behavior or predisposition can be used at preliminary hearings; and, additional rules and procedures focusing on protecting a victim's privacy and ensuring victims have the right to be heard.

It is important to emphasize a commander is not making disposition decisions of sexual assault allegations in a vacuum. The commander is advised by his or her SJA, an experienced judge advocate well versed in the military justice system and able to advise the commander on the full spectrum of legal actions required during and after the investigation. Judge Advocates are involved throughout the entire sexual assault response process and their advice and support to commanders is

integral. For all unrestricted reports of sexual assault, a Marine Corps trial counsel works closely with the commander and criminal investigators to ensure unity between the investigative and prosecutorial functions of the military justice system.

Finally, in 2014, the Congressionally appointed Response Systems to Adult Sexual Assault Crimes Panel (RSP) studied and issued a report on the proposed concept of removing a commander's ability to respond to allegations of sexual assault within their unit. The RSP concluded there is no evidence that removing commanders from sexual assault cases will result in positive or negative consequences.

### **ADDRESSING RETALIATION**

The Marine Corps has extended its holistic approach to sexual assault prevention into assessing and addressing retaliation for reports of sexual assaults and other crimes. Following widely-publicized social media incidents, the Commandant established both Task Force Purple Harbor and the Talent Management Executive Council (TMEC). Task Force Purple Harbor focused on initial responses to social media misconduct, including discrimination, harassment, and retaliation. The Task Force coordinated policy, focus, and resources across the Marine Corps. The work of the Task Force included a detailed assessment of over 150 initiatives impacting nearly every Marine Corps practice and program, from investigations of sexual harassment at the unit level to further integration of females in boot camp. The TMEC complements Task Force Purple Harbor efforts by harnessing senior leadership perspectives and experience in determining on how best to implement Task Force Purple Harbor efforts.

*New punitive order addressing deplorable activities and conduct.* Eliminating retaliation was a core concept integral to both the Task Force and TMEC. After careful review and staffing, the

Commandant published the Prohibited Activities and Conduct (PAC) order, Marine Corps Order 5354.1E. This order addresses a wide spectrum of conduct including bullying, ostracism, hazing, discrimination, sexual harassment, social media misconduct, dissident activities, and retaliation against victims or those who report criminal offenses. The PAC order requires commanders to investigate all complaints, protect complainants from retaliation, conduct follow-up assessments for substantiated and unsubstantiated dispositions, and to measure effectiveness of command implementation through regular surveys.

The PAC order was a major step forward in Marine Corps efforts to identify destructive and abusive conduct and hold offenders accountable through administrative, disciplinary, and criminal charges, where appropriate. The PAC order is an important part of our effort to further enhance a culture where sexual assault and retaliation are not tolerated.

## **CONCLUSION**

Supported by the legal community, Marine Corps commanders are focused and ready to address the crime of sexual assault. The commander's role in the military justice process is fundamental to ensuring the preservation of good order, discipline, and welfare in the Marine Corps. As a result, commanders must remain central to the process. Marine Corps judge advocates support the commander in every step of the military justice process with advice and legal services support. I am committed to ensuring the Marine Corps legal community continues to be best manned, trained, and equipped to support commanders in addressing sexual assault and eliminating it from our ranks. I look forward to working with Congress to meet our goals.