

NOT PUBLIC UNTIL RELEASED BY THE  
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**

**“RACIAL DISPARITY IN UCMJ ACTIONS”**

**ON**

**16 JUNE 2020**

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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.

### **RACIAL DISPARITY AND COLLECTING DEMOGRAPHIC INFORMATION IN UCMJ ACTIONS**

In May 2019, the Government Accountability Office (GAO) released a report entitled, “DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities.” While this report found that race and gender were not statistically significant factors in the likelihood of conviction in general and special courts-martial, it did find disparities in the criminal investigation and charging processes. These disparities in our administration of justice warrant the Marine Corps’ immediate scrutiny and demand continuing action. The trust Marines place in one another on a daily basis make the elimination of racial inequality an imperative. As the Commandant of the Marine Corps recently explained, any form of racial inequality – whether it be direct or indirect, intentional or unintentional – threatens cohesion in the Marine Corps and must be addressed head-on. “Only as a unified force, free from discrimination, racial inequality, and prejudice can we fully demonstrate our core values, and serve as the elite warfighting organization America requires and expects us to be.” To that end, the Marine Corps is committed to implementing the findings of the GAO report.

### **GAO Report Findings and Recommendations**

The study made eleven separate recommendations, two of which require Department of the Navy action. First, (Recommendation Four) the GAO highlighted the need for the Department to “develop the capability to present servicemembers’ race and ethnicity data in its investigations and personnel databases using the same categories of race and ethnicity established by the December 2018 uniform standards for the military justice databases[.]” The second recommendation

(Recommendation Nine) stated “the Secretary of the Navy should consider the feasibility, to include the benefits and drawbacks, of collecting and maintaining complete information for all nonjudicial punishment cases in one of the Navy’s databases,” to include data on the servicemembers’s race, ethnicity, gender, offense, and punishment imposed.

***GAO Report – Recommendation Four***

With respect to Recommendation Four, Marine Corps Judge Advocate Division has modified our service-wide military justice case management system to capture GAO-recommended demographic data. Data collected and maintained in the Case Management System (CMS) includes information relevant to the court-martial process from the inception of charges to the final appeal. Marine Corps Judge Advocate Division has updated the data fields in CMS to record the race, ethnicity, and gender of both the accused and the victim in accordance with the uniform definitions of race and ethnicity established by the Office of Management and Budget Statistical Policy Directive No. 15, entitled Race and Ethnic Standards for Federal Statistics and Administrative Reporting. The Marine Corps will start reporting this information in its annual military justice report as required by Article 146a of the Uniform Code of Military Justice and the General Counsel of the Department of Defense’s Memorandum of 8 June 2020, which implements section 540I(b)(1) of the National Defense Authorization Act for Fiscal Year 2020.

***GAO Report – Recommendation Nine***

With respect to Recommendation Nine, the Marine Corps Total Force System collects information on nonjudicial punishments, to include race, gender, and ethnicity. However, in order to obtain data regarding the specific offenses and punishments imposed, each individual case file must be examined. Additionally, a departmental instruction requires General Court-Martial Convening Authorities to submit a quarterly report of military justice actions taken, including summary courts-martial and nonjudicial punishments to Marine Corps Judge Advocate Division.

Currently, these reports do not collect demographic information. However, pending the development of a comprehensive database, we are considering modifying the reporting system to require inclusion of demographic data consistent with the Secretary of Defense-issued uniform standards and OMB standards.

Better data collection brought about by changes within the last year will help us to collectively and comparatively assess data to identify any racial disparities. But we will not wait for better data to address and fight racial inequality now.

### **Ongoing Actions**

Since the January 2019 effective date of the Military Justice Act of 2016, the Marine Corps has provided training to convening authorities on the newly established non-binding disposition guidance contained in the Manual for Courts-Martial. This guidance provides convening authorities appropriate and inappropriate factors to consider when disposing of allegations under the UCMJ to ensure these commanders exercise authority in a reasoned and structured manner, consistent with the principle of fair and equitable administration of law. Among the inappropriate considerations are the “accused’s race, ethnicity, religion, gender, sexual orientation, national origin, or lawful political association, activities, or beliefs.”

Training and education also serve as fundamental components for how the Marine Corps strives to eliminate racial bias in its military justice system. The Marine Corps is pursuing the inclusion of an unconscious bias curriculum at every level of professional development, from the most junior Marine to senior leadership. Prospective commanders and senior enlisted leaders receive training on bias awareness through Marine Corps University. Our trial military judges also participated in a block of instruction on unconscious bias in February 2020 at the Joint Military Judges Annual Training, which is also on the agenda for the February 2021 training.

In addition to training, we must also strive to eliminate divisive symbols. To this end, the Commandant directed the removal of the Confederate battle flag from our installations. This removal applies to personal clothing and apparel, coffee mugs, posters, bumper stickers, and the front porches and yards of public private venture housing. Prohibiting the display of the Confederate battle flag supports the Marine Corps' core values, reinforces unit cohesion and security, and preserves good order and discipline. But as our Commandant recently explained, it is not enough to remove symbols that cause division – rather, we also must strive to eliminate division itself.

### **CONCLUSION**

The Marine Corps is fully committed to implementing the recommendations of the GAO report and any future efforts to address racial disparity in the uniform code of military justice. I look forward to working with Congress to meet our shared goal.