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Senate Armed Services Committee

**STATEMENT OF**  
**GENERAL JAMES F. AMOS**  
**COMMANDANT OF THE MARINE CORPS**  
**BEFORE THE**  
**SENATE ARMED SERVICES COMMITTEE**  
**ON**  
**SEXUAL ASSAULT PREVENTION AND RESPONSE**  
**4 JUNE 2013**

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## **GENERAL JAMES F. AMOS**

### **COMMANDANT OF THE MARINE CORPS**



On October 22, 2010 General James F. Amos assumed the duties of Commandant of the Marine Corps. General Amos was born in Wendell, Idaho and is a graduate of the University of Idaho. A Marine Aviator, General Amos has held command at all levels from Lieutenant Colonel to Lieutenant General.

General Amos' command tours have included: Marine Wing Support Squadron 173 from 1985-1986; Marine Fighter Attack Squadron 312 – attached to Carrier Air Wing 8 onboard USS Theodore Roosevelt (CVN-71) – from 1991-1993; Marine Aircraft Group 31 from 1996-1998; 3rd Marine Aircraft Wing in combat during Operations IRAQI FREEDOM I and II from 2002-2004; II Marine Expeditionary Force from 2004-2006; and Commanding General, Marine Corps Combat Development Command and Deputy Commandant, Combat Development and Integration from 2006 to 2008. Additional operational tours have included Marine Fighter Attack Squadrons 212, 235, 232, and 122.

General Amos' staff assignments have included tours with Marine Aircraft Groups 15 and 31, the III Marine Amphibious Force, Training Squadron Seven, The Basic School, and with the MAGTF Staff Training Program. Additionally, he was assigned to NATO as Deputy Commander, Naval Striking Forces, Southern Europe, Naples, Italy where he commanded NATO's Kosovo Verification Center, and later served as Chief of Staff, U.S. Joint Task Force Noble Anvil during the air campaign over Serbia. Transferred in 2000 to the Pentagon, he was assigned as Assistant Deputy Commandant for Aviation. Reassigned in December 2001, General Amos served as the Assistant Deputy Commandant for Plans, Policies and Operations, Headquarters, Marine Corps. From 2008-2010 General Amos was assigned as the 31st Assistant Commandant of the Marine Corps.

## **Introduction**

Sexual assault is criminal behavior that has no place in our Corps and my institution is aggressively taking steps to prevent it. Over the past twelve months, we have attacked sexual assault and have seen encouraging, and in some areas, measurable improvements in three specific areas – prevention, reporting, and offender accountability. There is more work to do, much more work, but we are seeing indicators that tell us we are on the right track.

Leadership is an essential element of our profession. We must be cautious, however, with changes that will undercut a Commanding Officer's ability to ensure obedience to orders. When Commanding Officers lose the ability to take action under the Uniform Code of Military Justice (UCMJ), we risk losing the enforcement mechanism needed to maintain the world's most effective fighting force.

My written testimony is composed of three main sections. First, I will discuss the importance of the military Commanding Officer generally. Any discussion of the role of the Commanding Officer in the military justice process must start with overall responsibilities and duties of a Commanding Officer to fight and win on the battlefield. Second, I will speak to the progress we have experienced in the last year under our Campaign Plan in the areas of prevention and response. Central to this discussion is the importance of top-down, Commanding Officer leadership that will bring about the culture change necessary to end sexual assaults, and the preconditions that lead to it in our Marine Corps. Finally, I will discuss our new Complex Trial Teams (CTT) that came online and began prosecuting complex cases in October 2012.

## **The Role of the Commanding Officer**

Sexual Assault Prevention within our ranks is ever front and center in my mind and at the top of my priorities. Our senior officers and Staff Non-Commissioned Officers have steadfastly focused on making the necessary changes to prevailing conditions and attitudes to create the environment that the American people not only expect but demand from their Marines. Sexual assault is a crime against individual Marines that reverberates within a unit like a cancer undermining the most basic principle we hold dear -- taking care of Marines. Our unit Commanding Officers are our first line of action in implementing aggressive policies and changing the mindset of the individual Marine.

The Commanding Officer of every unit is the centerpiece of an effective and professional warfighting organization. Marine Commanding Officers are chosen through a rigorous selection process, based on merit and a career of outstanding performance. They are entrusted with our greatest asset, the individual Marine. Commanding Officers are charged with building and leading their team to withstand the rigors of combat by establishing the highest level of trust

throughout their unit. Unit Commanding Officers set the command climate, one in which the spirit and intent of the orders and regulations that govern the conduct of our duties will be upheld. There are a number of leadership styles, but the result of any of them must be a group of Marines and Sailors that have absolute trust in their leaders, a level of professionalism derived from competence and confidence. Trust in the Commanding Officer and fellow Marines is the essential element in everything we do. Developing this trust, dedication, and esprit de corps is the responsibility of the Commanding Officer. Commanding Officers do this by setting standards, training to standards, and enforcing standards. This defines the good order and discipline required by every Marine unit. Marines expect this.

Whether it is rewarding success or correcting failure, the Commanding Officer remains the common denominator. Commanding Officers may delegate certain tasks, but they can never delegate their accountability for their unit. This is the essence of good order and discipline. A unit with good order and discipline meets and exceeds standards, works together to continually improve, follows orders, trains new members, expects constant success, seeks challenges, and does not tolerate behavior that undermines unit cohesion.

As the nation's Crisis Response Force, the Marine Corps must be ready to answer the nation's call at a moment's notice. Accordingly, good order and discipline is required at all times...wherever a unit is and regardless of what that unit has been tasked to do. Commanding Officers cannot delegate this responsibility.

I have repeatedly referred to these duties as maintaining the "spiritual health" of the Marine Corps from a holistic sense. This theme was the genesis of the 27 briefings the Sergeant Major of the Marine Corps and I delivered to Marines all around the world last year. My intent was to re-emphasize the heritage of our Marine Corps...who we are, and who we are not. Our heritage is one that is guided by our principles of Honor, Courage and Commitment and described by our motto...Semper Fidelis – Always Faithful.

I expect Marines to have a unified sense of moral and righteous purpose, to be guided by what I refer to as "true north" on their moral compass. I will aggressively pursue and fight anything that destroys the spiritual health of the Marine Corps and detracts from our ability to fight our Nation's wars. That includes sexual assault. A single sexual assault in a unit can undermine everything that a Commanding Officer and every Marine in that unit has worked so hard to achieve.

After more than 43 years of service to our nation, it is inconceivable to me that a Commanding Officer could not immediately and personally – within applicable regulations – hold Marines accountable for their criminal behavior. That is the sacred responsibility of Commanding Officership. I expect to be held accountable for everything the Marine Corps does

and fails to do. That is my task under U.S. law. I, in turn, will hold my Commanding Officers accountable for everything their units do and fail to do.

Commanding Officers never delegate responsibility and accountability, and they should never be forced to delegate their authority. We cannot ask our Marines to follow their Commanding Officer into combat if we create a system that tells Marines to not trust their Commanding Officer on an issue as important as sexual assault. In May of 2012, I wrote a personal letter addressed to “All Marines” regarding sexual assault; I told them “*[o]ur greatest weapon in the battle against sexual assault has been and will continue to be decisive and engaged leadership.*” My opinion has not changed.

While our efforts in confronting sexual assault have been expansive, they have not eliminated this behavior from our ranks. I have been encouraged by our progress, but I acknowledge today, as I have told Members of Congress in previous testimony, that we have a long way to go. Changing the mindset of an institution as large as the Marine Corps always takes time, but we remain firmly committed to removing sexual assault from our Corps. We continue to work to ensure that our leaders gain and maintain the trust of their Marines, as well as ensuring that Marines can likewise trust their chain of command when they come forward. We are not there yet. Where the system is not working as it should, we are committed to fixing it, and to holding commanders accountable for what is happening in their units. I pledge that we will work with Congress, as well as experts in the field, as we eliminate sexual assault with our ranks.

I have reviewed the current legislative proposals related to sexual assault and military justice, and I believe there is much merit in many of the proposals. We should continue to engage in a serious debate about the best way to administer military justice. I want to specifically identify some encouraging trends in prevention, response and offender accountability. I believe these are based on substantial changes made in our SAPR Campaign Plan, and in the complete legal re-organization of our trial teams, both instituted mid-year 2012. These changes are showing measurable improvements and demonstrate that a Commanding Officer-led model of military justice can be successful. My service will continue to work tirelessly in our fight to bring about the culture change that will combat sexual assault.

## **Prevention and Response**

Our Sexual Assault Prevention and Response Campaign Plan was launched a year ago with the stated purpose of reducing – with the goal of eliminating – incidents of sexual assault through engaged leadership and evidenced based best practices. Essential to this goal, as stated, is the Commanding Officer’s responsibility to establish a positive command climate, reflecting our core values of Honor, Courage and Commitment. Commanding Officers must instill trust

and confidence that offenders will be held accountable and that victims receive the supportive services that preserve their dignity and safety. Sexual assault is an under-reported crime both inside the military and out, with an estimated 85%-90% of sexual assaults remaining unreported according to the Department of Defense. We must ensure, for those Marines who do come forward, that we provide the support they need with compassion and determination. Last year we saw a 31% increase in reporting, which speaks directly to the confidence that Marines have in their Commanding Officer and the Marine Corps. Reporting is the bridge to victim care and accountability remains the final litmus test for measuring our progress in our mission to eradicate this crime from our ranks. This sharp increase in reporting from last year is continuing into this year; I fully expect that we will exceed the rate of reporting of last year. I realize that on the surface an increase in reporting can be viewed as a negative outcome, however, I view it as an encouraging sign that our victims' confidence in our ability to care for them has increased markedly.

To supplement the ongoing work of the SAPR program and leadership in the field, we chartered a task force in April 2012, which produced our SAPR Campaign Plan and fed my subsequent Heritage Briefs. My intention was to reinvigorate our SAPR efforts program and implement large-scale prevention initiatives across the Marine Corps. With a culture change, a renewed emphasis on engaged leadership, and the message that it is every Marine's inherent duty to step-up and step-in to prevent sexual assaults. The efforts of the Campaign Plan and my Heritage Briefs are aligned with the Secretary of Defense's five lines of effort: Prevention, Advocacy, Investigation, Accountability and Assessment. Currently we have seen an increase in reporting of sexual assaults that went unreported in the previous year. Initial feedback from the field indicates that the surge efforts inspired victims to come forward because the message received was the Marine Corps takes sexual assault seriously and that it will not be tolerated.

Our Campaign Plan is comprised of three phases. The first phase consisted of 42 initiatives across the Marine Corps, resulting in an unprecedented call to action to address the prevalence of sexual assault within our ranks. Initiating a top-down approach, the SAPR General Officer Symposium (GOS) was held 10-11 July 2012 for two full days of training, where every General Officer in our Corps came to Marine Corps Base Quantico. We did the same thing in August during our 2012 Sergeants Major Symposium. Specifically convened to address the prevention of sexual assault, the two-day training event for all Marine Corps General Officers included subject matter experts who spoke on topics relevant to prevention, including the effects of alcohol, inadvertent victim blaming, dispelling myths, and other related subjects. Ethical Decision scenarios were introduced. This video-based training initiative, involving sexual assault based scenarios, was designed to evoke emotion, stimulate discussion, and serve as another training tool that would resonate with Marines of all ranks. This renewed focus on senior leadership was deemed a critical turning point for the Marine Corps. According to the 2012 Workplace and Gender Relations Survey of Active Duty Personnel (WGRA), 97% of

Marines received training within the past 12 months, which was an increase from 2010. These training efforts remain ongoing, as approximately 30,000 new Marines are brought in annually. Sixty-two percent of the Marine Corps population is between the ages of 18 and 24 – a high risk demographic for sexual assault.

To further cement leadership engagement, Command Team Training was given to all Commanding Officers and Sergeants Major, and was designed to bring forth a desired end state in which all leaders through are proactively engaged on the problem of sexual assault within the Corps. The program consisted of one day of training presented in the form of guided discussion, case studies, Ethical Decision scenarios and SAPR Engaged Leadership Training. SAPR Engaged Leadership Training, specifically, provided command teams in-depth practical knowledge of their responsibilities, the importance of establishing a positive command climate, the process of Victim Advocate (VA) selection, critical elements of bystander intervention and prevention. Bystander intervention, an evidence-based practice, is a central focus of all of our training programs. The 2012 WGRA Survey showed that 93% of female and 88% of male Marines indicate that they would actively intervene in a situation leading to sexual assault. I am encouraged by that data. Command Team Training was completed by 31 August 2012.

In Phase I of the Campaign Plan, all SAPR training was revitalized and standardized Marine Corps-wide. Specific Phase I training initiatives included "Take A Stand" bystander intervention training for all Non-Commissioned Officers and SAPR training for every single Marine. To achieve long-term cultural change, this training will be sustained through re-crafting the curricula in all of our professional schools, customizing the training based on the rank and experience of the individual Marine.

The second phase of the Campaign Plan, Implementation, is presently underway. This phase is focused on victim care, with the major initiative being the creation of the Sexual Assault Response Team (SART). SARTs are multidisciplinary teams of first responders that are designed to respond proficiently to the many concerns of victims, ensuring efficient investigative practices, forensic evidence collection, victim advocacy and care. A SART will include, at a minimum, the following personnel: Naval Criminal Investigative Service (NCIS), Military Police, Sexual Assault Response Coordinator (SARC)/VA, Judge Advocate/Trial Counsel, mental health services representative and Sexual Assault Forensic Examiner. For those installations where an immediate SART response capability is not available, the SART can include; community representatives, local law enforcement, rape crisis centers, district attorneys, federal task forces, existing civilian SARTs, or nongovernmental organizations specializing in sexual assault. Each SART is coordinated by the installation SARC.

The SART initiative coincides with the parallel efforts to increase the number of SAPR personnel in the field and intensify the training requirements. All SAPR personnel now receive

40 hours of focused sexual assault advocacy training and go through an accreditation process administered by the National Organization for Victim Assistance (NOVA). The addition of credentialed subject matter experts in the field enhances our victim care capabilities. Forty-seven new fulltime positions have been added in support of the nearly 100 highly trained, full-time civilian SARC's and VAs and nearly 1,000 collateral-duty SARC's and Unit Victim Advocates (UVAs). SAPR personnel are handpicked by Commanding Officers and serve as the victim's liaison for all supportive services to include counseling, medical, legal, chaplain and related support.

Phase II, Prevention, efforts also include further development of the SAPR training continuum, encompassing bystander intervention training for junior enlisted Marines, the development of eight additional Ethical Decision Games and the implementation of customized SAPR training for all Marines.

Phase III, the Sustainment Phase, will focus on providing Commanding Officers at all levels the requisite support and resources to effectively sustain SAPR efforts and progress. It includes the initiative to support Marine Corps Recruiting Command's implementation of a values-based orientation program, focused on the "whole of character" for young adults who are members of the Delayed Entry Program and have not yet attended recruit training. In addition to sexual assault, the program will specifically address all non-permissive behaviors such as sexual harassment, hazing, alcohol abuse, and other high-risk behaviors that tear at the fabric of the Corps.

The efforts of our Campaign Plan and Heritage Briefs have had many positive effects to include an increase in reporting. The Marine Corps portion of the FY12 Annual Report shows a 31% increase in sexual assault reports involving Marines and shows that this spike occurred largely in the second half of 2012...coinciding with implementation of our Campaign Plan and training and education efforts. As previously stated, I view increased reporting is a positive endorsement of our efforts to deepen the trust and confidence in our leadership and response system, as well as speaks to the courage of those Marines most impacted by this crime. In time, and with continued focus, Marines will increasingly understand and see that we have put in place a response system that provides the necessary care for victims while holding offenders accountable.

The 2012 WGRA indicated a greater number of female Marines aware of the number of options available to them to include the DoD Safe Helpline, expedited transfers and restricted reporting. Seventy-seven percent of those females, who reported some form of unwanted sexual contact, also told us they had a positive experience with the advocacy support provided to them.



## **Reporting**

A victim of sexual assault can initiate SAPR services through various avenues and have two reporting options: unrestricted and restricted reporting. For both, our goal is to connect victims with Victim Advocates, who serve as the critical point of contact for information and support. Victim Advocates will provide support from the onset of the incident to the conclusion of needed care.

Unrestricted reporting triggers an investigation by NCIS as well as notification of the unit Commanding Officer. To make an unrestricted report, victims have several access points. Options include calling the Installation 24/7 or the DoD Safe Helplines, making a report to a civilian Victim Advocate (VA), Uniformed Victim Advocate (UVA), Sexual Assault Response Coordinator (SARC), medical/healthcare provider, law enforcement, or the chain of command. A victim may also make a report to a legal assistance attorney or a chaplain. All access points are funneled to the Victim Advocate to track and support the victim. Victim Advocates ensure that a Sexual Assault Forensic Examination (SAFE) is offered to the victim, counseling and/or chaplain services are offered to the victim, and liaison services with legal assistance are initiated. Victims are counseled early on in the proceedings that legal assistance is available through a Victim Witness Liaison Officer who provides information and assistance through the legal phase of this continuum. In addition, Victim Advocates keep the victim informed throughout the continuum of services.

There are many instances where Commanding Officers are made aware of incidents of sexual assault by third parties. In those instances, Commanding Officers are obligated to contact NCIS to initiate an investigation, as they would for any report of a crime that is brought to their attention. These reports are classified as unrestricted reports and all SAPR services are offered to victims in those instances.

Sexual assault cases and the completed NCIS independent investigation are automatically elevated to the first O-6 in the chain of command who, in close consultation with their legal advisors, decides which legal avenue to pursue. This decision-making process also includes a discussion with the first General Officer in the chain of command to decide whether the case will be pulled up to his or her level.

Commanding Officers are responsible for providing for the physical safety and emotional security of the victim. A determination will be made if the alleged offender is still nearby and if the victim desires or needs protection. They will ensure notification to the appropriate military criminal investigative organization (MCIO) as soon as the victim's immediate safety is addressed and medical treatment procedures are in motion. To the extent practicable, a Commanding Officer strictly limits knowledge of the facts or details regarding the incident to only those

personnel who have a legitimate need-to-know. Commanding Officers are in the best position to immediately determine if the victim desires or needs a "no contact" order or a Military Protective Order issued against the alleged offender, particularly if the victim and the alleged offender are assigned to the same command, unit, duty location, or living quarters.

Victims are advised of the expedited transfer process and the possibility for a temporary or permanent reassignment to another unit, living quarters on the same installation, or other duty location. Commanding Officers ensure the victim receives monthly reports regarding the status of the sexual assault investigation until its final disposition.

The Defense Sexual Assault Incident Database (DSAID) is a central data system managed by the Department of Defense Sexual Assault Prevention and Response Office (DoD SAPRO). DSAID is a DoD-wide service requirement that allows for the standardization of data collection and management, which is critical for improving case oversight, meeting reporting requirements, and informing SAPR Program analysis, planning, and future efforts to care for victims. In addition to providing consistency across the services in reporting, DSAID is electronically linked to the data system used by Naval Criminal Investigative Services (NCIS), facilitating timely and accurate coordination within the investigative process. Full migration to DSAID was completed in October 2012.

In October 2012, the Marine Corps implemented SAPR 8-Day Briefs, an additional tool designed to guarantee leadership engagement at the onset of each case. For all unrestricted reports of sexual assault, the victim's Commanding Officer must complete a SAPR 8-Day Brief to ensure that victim care resources are being provided. 8-Day Briefs include the Commanding Officer's assessment and a timely way ahead, and are briefed within eight days to the first General Officer in the chain of command. The reports are briefed quarterly to the Assistant Commandant of the Marine Corps. The analysis of the data compiled utilizing SAPR 8-Day Briefs also provides us with a more immediate assessment and surveillance opportunity, helping us to identify trends to further inform our prevention and response efforts. A victim's Commanding Officer stays engaged in the process from beginning to end by attending monthly Case Management Group meetings and coordinating with the SARC to ensure the appropriate level of victim care and support are being provided.

Restricted reporting is another reporting option for victims. This option is a critical resource for those in need of support. Restricted reporting does not trigger an official investigation but does allow for confidentiality and time to process the impact of the incident without the visibility that comes with immediate reporting to law enforcement officials and Commanding Officers. Victims are able to get a Sexual Assault Forensic Examination (SAFE). Evidence recovered from a SAFE can be held for five years, should the victim opt to convert their report to an unrestricted status. Through a restricted report, victims can also receive general

medical treatment, counseling services, and the full support of the Victim Advocate and Sexual Assault Response Coordinator.

There are many reasons why a victim of sexual assault would not report an incident, the perceived stigma about being re-victimized remains a powerful deterrent to reporting for Marines. Restricted reports can be taken by specified individuals (i.e., SARCs, VAs/UVAs, or healthcare personnel). Restricted reporting allows those victims to take care of themselves emotionally and physically. Victims who make restricted reports often comprise the population who might otherwise remain silent. Restricted reporting increased by over 100% in the FY12 Annual Report and serves as an initial indicator that our messaging about the reporting options has been effective.

## **Assessment**

The Marine Corps is developing ways to monitor victim care and services more closely through SARC engagement in an effort to improve and better utilize all resources available to victims and to help keep victims engaged in the process. A victim survey is being developed to accomplish that task and will assess all levels of services provided.

I have just recently approved and directed new Command Climate surveys. These surveys are mandatory within 30 days of a Commanding Officer taking command and also at the Commanding Officer's twelve-month mark in command. Giving Commanding Officers this tool and holding them accountable for the overall health and well-being of their command will help us mitigate the high-risk behaviors that tear at the fabric of the Corps. The results of the Command Climate surveys will be forwarded to the next higher headquarters in the chain of command. It is important to keep in mind however that the command climate surveys are just one assessment tool.

## **The Investigation**

Before the Commanding Officer is confronted with a decision about what to do with an allegation, the Commanding Officer will receive significant advice and information from three different sources. By current Marine Corps practice, once NCIS is notified of a sexual assault, there is coordination between a prosecutor and the investigating agent(s). This practice enables unity between the investigative and prosecutorial functions of the military justice system. It also ensures that the Commanding Officer's evaluation of the alleged crime is fed by two distinct and independent professional entities – NCIS and the military prosecutor. Additionally, the Commanding Officer is advised by his Staff Judge Advocate (SJA) during this stage. The SJA is an experienced judge advocate, well versed in the military justice system, and able to advise the Commanding Officer on what actions to direct during the investigation, such as search authorizations.

As a critical component of our Campaign Plan, I directed that our legal community completely reorganize into a regional model, which gives us the flexibility to better utilize the skills of our more experienced litigators. Practically speaking, our new regional model, which became fully operational late last year, allows us to place the right prosecutor, with the appropriate training, expertise, supervision, and support staff, on the right case, regardless of location. These prosecutors not only represent the government at the Court-Martial, but they work with NCIS to develop the case and advise the Commanding Officer and his or her SJA about the status of the case.

I directed this reorganization because an internal self-assessment of our military justice docket uncovered an increase in complex and contested cases as a percentage of our total trial docket. We realized that our historical model of providing trial services needed to be revised to better handle these complex cases, many of which involved sexual assault. More specifically, within the alleged sexual assault cases, we noticed a significant number of alcohol associated sexual assaults, which are difficult cases to prosecute, thus I wanted our more seasoned trial attorneys available for use by our Commanding Officers.

The legal reorganization greatly increases the legal expertise (based on experience, education, and innate ability) available for prosecuting complex cases. The reorganization divided the legal community into four geographic regions — National Capital Region, East, West, and Pacific. These regions are designated Legal Service Support Areas (LSSA) and are aligned with the structure of our regional installation commands. Each LSSA contains a Legal Services Support Section (LSSS) that is supervised by a Colonel Judge Advocate Officer-in-Charge. Each LSSS contains a Regional Trial Counsel (RTC) office that is led by an experienced Lieutenant Colonel litigator whose extensive experience provides effective regional supervision over the prosecution of Courts-Martial cases. This new construct provides for improved allocation of resources throughout the legal community and ensures that complex cases, such as sexual assaults, are assigned to experienced counsel who are better suited to handle them. After our reorganization, we have increased the experience level in our trial bar by over 20% from the previous year.

The Marine Corp's "Special Victim Capability" resides in the RTC offices through the use of Complex Trial Teams (CTT). The CTT is assembled for a specific case and may contain any or all of the following: a civilian Highly Qualified Expert (HQE), experienced military prosecutors, military criminal investigators, a legal administrative officer, and a paralegal. The civilian HQE is an experienced civilian sexual assault prosecutor who has an additional role training and mentoring all prosecutors in the region. The HQEs are assigned to the RTCs and work directly with prosecutors, where they will have the most impact. HQEs report directly to the RTC and provide expertise on criminal justice litigation with a focus on the prosecution of

complex cases. In addition to their principal functions, the HQEs also consult on the prosecution of complex cases, develop and implement training, and create standard operating procedures for the investigation and prosecution of sexual assault and other complex cases. The criminal investigators and the legal administrative officer in the RTC office provide a key support role in complex prosecutions. Historically, a prosecutor was individually burdened with the coordination of witnesses and experts, the gathering of evidence, background investigations, and finding additional evidence for rebuttal, sentencing, or other aspects of the trial. These logistical elements of a trial are even more demanding in a complex trial; the presence of criminal investigators and the legal administrative officer allow Marine Corps prosecutors to focus on preparing their case.

Our Reserve Judge Advocates, who are experienced criminal prosecutors, are brought on active duty and made available to mentor our active duty Judge Advocates either during training or on specific cases. To ensure an adequate level of experience and supervision not only at the headquarters level, but also in each LSSS, we more than doubled the number of field grade prosecutors we are authorized to have on our rolls from 11 to 25. We also specifically classified certain key supervisory military justice billets to require a Master of Laws degree in Criminal Law.

## **The Disposition Decision**

When NCIS completes its investigation, the Commanding Officer must make a disposition decision. Essentially, the Commanding Officer must decide if the case should go to Court-Martial or some lesser forum. There are two important points to cover at this stage. First is the type of Commanding Officer who is making this decision. Second is the process the Commanding Officer uses to make his or her decision.

On April 20, 2012, the Secretary of Defense (SecDef) issued a memorandum withholding Initial Disposition Authority (IDA) in certain sexual assault offenses to the Colonel, O-6, SPCMCA level. The SecDef withheld the authority to make a disposition decision for penetration offenses, forcible sodomy, and attempts to commit those crimes. This withholding of IDA to a Sexual Assault Initial Disposition Authority (SA-IDA) also applies to all other alleged offenses arising from or relating to the same incident, whether committed by the alleged offender or the alleged victim (i.e., collateral misconduct). On June 20, 2012, I expanded this O-6 level withholding to include not just penetration and forcible sodomy offenses, but all contact sex offenses, child sex offenses, and any attempts to commit those offenses.

My expansion of the scope of the SecDef's withhold of IDA is another example of the important role a Commanding Officer plays in military justice. I felt it was important for good order and discipline to make it clear to our Marines that all types of non-consensual sexual

behavior were worthy of a more senior and experienced Commanding Officer's decision. I also made it clear that under no circumstance could the SA-IDA forward a case down to a subordinate authority for disposition.

Before discussing the procedures our SA-IDAs use to make the initial disposition decision, I want to point out a specific Marine Corps policy on collateral misconduct by an alleged victim (e.g., underage drinking). Marine SA-IDAs are encouraged to defer adjudication of any alleged victim collateral misconduct until the more serious non-consensual sex offenses are adjudicated. This policy is specifically aimed at encouraging victim reporting and making the fairest decision regarding collateral misconduct at the most appropriate time.

In accordance with Rule for Court-Martial (RCM) 306(c), the SA-IDA for sexual assaults may dispose of charged or suspected offenses through various means: "Within the limits of the Commanding Officer's authority, a Commanding Officer may take the actions set forth in this subsection to initially dispose of a charge or suspected offense," by taking (1) no action, (2) administrative action, (3) imposing Non-Judicial Punishment, (4) disposing of charges through dismissal, (5) forwarding charges to a superior authority for disposition, or (6) referring charges to a Court-Martial.

Before making a decision regarding the initial disposition of charges, the Convening Authority must confer with his or her SJA. In the Marine Corps model for providing legal services, the provision of legal services support (i.e. trial and defense services, review, civil law, legal assistance) is completely divorced from the provision of command legal advice. Practically, this means the Commanding Officer's SJA is not affiliated with the prosecutors who evaluate the evidence in the case and recommend whether to take a case to trial. Effectively, this ensures the Commanding Officer and his SJA receive impartial advice (in addition to information from NCIS) in order to make an appropriate and well-informed disposition decision in accordance with RCM 306.

If a Commanding Officer decides to proceed with charges against an alleged offender, the Commanding Officer will file a request for legal services with the LSSS that services the command.

### **The Article 32 Investigation**

Before a case can go to a General Court-Martial, the Commanding Officer must first send the case to an Article 32 investigation. According to Article 32, UCMJ, "[n]o charge or specification may be referred to a General Court-Martial for trial until a thorough and impartial investigation of all the matters set forth therein have been made." A General Court-Martial may not proceed unless an Article 32 investigation has occurred (or the accused has waived it).

Unlike a grand jury under Federal Rule of Criminal Procedure 6, the proceeding is not secret and the military accused has the right to cross-examine witnesses against him or her.

RCM 405 governs the conduct of the Article 32 investigation and states in its discussion that “the investigating officer should be an officer in the grade of major... or higher or one with legal training... and may seek legal advice concerning the investigating officer’s responsibilities from an impartial source.” As a matter of regulation in the Marine Corps, for a case alleging a sexual assault, the Article 32 investigating officer (IO) must be a Judge Advocate who meets specific rank and experience requirements, in accordance with Marine Corps Bulletin (MCBul) 5813, “Detailing of Trial Counsel, Defense Counsel, and Article 32, UCMJ, Investigating Officers.” MCBul 5813 was published on 2 July 2012 and ensures that Judge Advocates who are detailed as trial counsel (TC), defense counsel (DC), and Article 32 IOs possess the appropriate expertise to perform their duties.

Once the Article 32 investigation is complete, the IO makes a report to the Convening Authority that addresses matters such as the sufficiency and availability of evidence, and more importantly, contains the IO’s conclusions whether reasonable grounds exist to believe that the accused committed the offenses alleged and recommendations, including disposition. Although the rules of evidence generally do not apply at an Article 32 investigation, it is important to note that the evidentiary rape-shield law and all rules on privileges do apply.

Before deciding how to dispose of charges and allegations, the Convening Authority again receives advice from his or her SJA and then decides how to dispose of the charges and allegations. Prior to making a disposition decision, Convening Authorities also take the victim’s preference into consideration. Victim Advocates, SARCs, and the victim can express preferences to the trial counsel, who will communicate directly with the SJA and Convening Authority. If the Commanding Officer decides to move forward, he or she may refer the charges to a General Court-Martial or a lesser forum.

## **Court-Martial**

Since the formation of our CTTs in October 2012, we have seen significant improvements in our ability to successfully prosecute Courts-Martial involving sexual assault offenses. After the first six months of our legal reorganization (October 2012-March 2013), we compared court-martial disposition data against the same six-month period from the previous year (October 2011-March 2012). Here are our main findings:

- A 77 percent increase in the number of cases involving sex offenses that went to Court-Martial (from 31 to 55). We attribute that significant increase to three main things: first, an improved investigative effort as a result of improvements in NCIS’ ability to investigate cases, along with the force multiplying effect of our embedded investigators;

second, the dedication of increased prosecution resources to complex cases; and three, increased reporting based on our Campaign Plan efforts.

- A 94 percent increase in the number of General Courts-Martial in cases dealing with sexual assault offenses (from 19 to 37).
- For General Courts-Martial involving sexual assault offenses, an 89.5% overall conviction rate, with 62.5% of those convictions for sexual assault offenses. In the 30 cases where there was a conviction for a sexual assault offense, 90% of the sentences included a punitive discharge. We also almost doubled the amount of sexual assault convictions receiving confinement in excess of five years (from 28.5% to 44%).
- Between the two six-month periods, there was an 18% increase in the conviction rate of charged sexual assault offenses.

Overall, the initial data from our legal reorganization shows that our CTTs are prosecuting more cases with better results. We expect this trend to continue and will closely monitor the statistics to identify any other relevant trends. This set of initial data also validates my belief that a Commanding Officer-based system of military justice can successfully prosecute complex cases if we are smart in how we dedicate the appropriate investigative and prosecutorial resources.

My focus to this point has been on the prosecution function within the Marine Corps. What must not be lost in our discussion of offender accountability, is the primary goal of justice in our courtrooms. I must ensure that each Marine accused receives a constitutionally fair trial that will withstand the scrutiny of appeal. To that end, in 2011 we established the Marine Corps Defense Services Organization (DSO), which placed all trial defense counsel under the centralized supervision and operational control of the Chief Defense Counsel (CDC) of the Marine Corps. This change was designed to enhance the independence of the Marine Corps DSO and the counsel assigned to it. The DSO also established a Defense Counsel Assistance Program (DCAP) to provide assistance and training to the DSO on sexual assault and other cases.

During the Court-Martial process, we take special care to ensure that the rights and interests of victims are protected. The Military Rules of Evidence (MRE) provides the same protections as our Federal and State courts against the humiliation, degradation and intimidation of victims. Under MRE 611, a military judge can control the questioning of a witness to protect a witness from harassment or undue embarrassment. More specifically for sexual assault cases, the military's "rape shield" in MRE 412 ensures that the sexual predisposition and/or behavior of a victim is not admissible absent a small set of well-defined exceptions that have survived extensive appellate scrutiny in federal and military courts (the exceptions listed in MRE 412 are identical to the exceptions listed in Federal Rule of Evidence 412). In addition, victims also have the protection of two special rules on privileges. Under MRE 513, a patient (victim) has the



privilege to refuse to disclose, and prevent another person from disclosing, a confidential communication between the patient and a psychotherapist. Under MRE 514, the military has created a “Victim advocate-victim privilege” that allows a victim to refuse to disclose, and prevent another person from disclosing, a confidential communication between the victim and a victim advocate in a case arising under the UCMJ. These two evidentiary privilege rules ensure that victims have a support network they are comfortable using and that they do not have to fear that their efforts to improve their mental well-being will be used against them at a court-martial.

Marine prosecutors, paralegals and NCIS investigators, along with full-time, professional, credentialed Sexual Assault Response Coordinators (SARCs) and Victim Advocates (VAs), provide individualized support to inform and enable victims to participate in the military justice process. The Marine Corps is in the process of hiring 25 full-time credentialed SARCs and 22 full-time credentialed VAs to augment the over 70 SARCs and 955 Uniformed and civilian VAs presently in the field. Hiring and credentialing are on track to be completed by October 2013.

### **Post-trial – the Convening Authority’s Clemency Power**

On May 7, 2013, the Secretary of Defense submitted proposed legislation to Congress that would modify the Convening Authorities ability to take action on the findings and sentence of a Court-Martial during the post-trial phase. Specifically, the legislation would limit the Commanding Officer’s ability to act on the findings of a Court-Martial to a certain class of “minor offenses,” and also require a written explanation for any action taken on the findings or the sentence of a court-martial. I support exploring these proposed modifications for two reasons.

First, I believe the proposed modifications are reasonable adjustments to a specific phase of the Court-Martial process that has changed significantly since its inception. The Commanding Officer’s broad authority under Article 60 was established during a time when the key participants of the trial—the prosecutors, defense counsel, and military judges—were not professional lawyers, and when there was not a comprehensive system of appellate review. The professionalization of our Court-Martial practice and the addition of multiple layers of appellate review justify reducing the Commanding Officer’s broad authority to take action on the findings in cases not involving “minor offenses.” I believe the Secretary of Defense’s proposal properly excludes the right class of cases that would be left to the appellate review process for the correction of legal error and/or clemency. Similarly, I believe that a Commanding Officer, based on his or her specific needs for good order and discipline, should retain the ability to take action on the findings of “minor offenses” identified in the proposal.

Second, the proposal would improve the transparency of the military justice system. When the Commanding Officer does believe it is necessary to take action under Article 60, that action should be as transparent and visible as every other aspect of the Court-Martial. The proposed requirement for a written explanation for any Article 60 action ensures accountability and fairness and will preserve the trust and confidence service members and the public have in our military justice system.

## **Conclusion**

I fully acknowledge that we have a problem and that we have much to do. We must protect our greatest asset – the individual Marine...they are and will always be the strength of our Corps. That said, I am determined to establish a culture that is intolerant of sexual harassment and sexual assault, one that promotes mutual respect and professionalism, and maintains combat readiness. I am determined to fix this problem and will remain fully engaged in developing solutions towards prevention efforts and maintaining our high standards of good order and discipline.