

NOT PUBLIC UNTIL RELEASED BY THE
SENATE ARMED SERVICES COMMITTEE

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

**BEFORE THE
SENATE ARMED SERVICES COMMITTEE
SUBCOMMITTEE ON PERSONNEL**

**CONCERNING
“HEARINGS TO EXAMINE THE MILITARY SERVICES' PREVENTION OF AND
RESPONSE TO SEXUAL ASSAULT.”**

**ON
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Major General Daniel J. Lecce

Staff Judge Advocate to the Commandant of the Marine Corps

Major General Daniel J. Lecce was born and raised in Pittsburgh, Pennsylvania. He is a 1984 graduate of the University of Pittsburgh and was commissioned a Second Lieutenant in the United States Marine Corps in 1986. He received his Juris Doctorate from the University of Pittsburgh School of Law in 1987.



He first served at Camp Pendleton, California, where he was assigned as civil law attorney and trial counsel. He later served as the Commanding Officer, Headquarters and Service Company, Marine Corps Base, Camp Pendleton. He was transferred to the 3rd Force Service Support Group, Okinawa, Japan, in 1992 and served as a legal assistance attorney and trial counsel. Major General Lecce next served as an Assistant Professor, United States Naval Academy (Leadership and Law), from 1993 to 1996. He was selected and attended the Judge Advocate General of the Army School from which he received a Masters of Law in Operational and International Law in 1997.

In 1997 Major General Lecce was transferred to 1st Force Service Support Group at Camp Pendleton, California, where he served as Senior Defense Counsel and Officer-in-Charge of Legal Assistance. In 1999 he deployed as the Staff Judge Advocate, 15th Marine Expeditionary Unit, and participated in the United Nations' Operation Stabalise (East Timor) and Operation Southern Watch (Persian Gulf). He was later transferred to Norfolk, Virginia, and served as Deputy Staff Judge Advocate, United States Marine Corps Forces, Atlantic, from 2000-2003.

In 2003, Major General Lecce was selected and served as the Commanding Officer, B Company, Marine Security Guard Battalion (United Arab Emirates) responsible for all Marine

detachments posted at United States embassies and consulates throughout the Middle East and the Indian subcontinent. He left command in 2005 to serve as the Branch Head, Operational and International Law, Office of the Staff Judge Advocate to the Commandant, Headquarters, U.S. Marine Corps. In 2006 Major General Lecce was selected as the Marine Fellow to Johns Hopkins University School of Advanced International Studies. He graduated with a Masters of International Public Policy in 2007 and was designated a Regional Area Officer (Middle East/North Africa).

He was assigned as the Staff Judge Advocate, 2d Marine Aircraft Wing, in 2007. In 2009 Major General Lecce deployed with II Marine Expeditionary Force (Forward) in support of Operation Iraqi Freedom. After returning to the United States in 2010, Major General Lecce served as the Commanding Officer, Marine Corps Base, Camp Lejeune. After command, he served as the Staff Judge Advocate to the Combatant Commander, United States Southern Command (SOUTHCOM).

He assumed duties as the Assistant Judge Advocate General, Military Justice, in June 2014, overseeing all courts-martial appellate litigation within the Department of the Navy and military justice policy for the Navy. In July 2018, Major General Lecce was promoted to his current rank and assumed the billet of Staff Judge Advocate to the Commandant of the Marine Corps.

Major General Lecce's personal awards include the Defense Superior Service Medal, the Legion of Merit, the Meritorious Service Medal, and the Navy-Marine Corps Commendation Medal.

INTRODUCTION

Chairman Tillis, Ranking Member Gillibrand, and distinguished Members of the Subcommittee, on behalf of the Secretary of the Navy and the Commandant of the Marine Corps, thank you for the opportunity to testify today.

One sexual assault is too many. The Marine Corps' efforts to eliminate sexual assaults incorporate the detailed work of the Response Systems Panel, the Defense Advisory Committee on Investigations, Prosecution, and Defense of Sexual Assault in the Armed Forces, and the Congress. Like all the Services, the Marine Corps is in the midst of implementing the most sweeping changes to the military justice system since the inception of the Uniform Code of Military Justice (UCMJ). The last 15 years have been a time of significant changes in military justice. The Marine Corps legal community remains focused on providing timely, effective, and appropriate legal advice and legal services.

My remarks today will begin with a summary of Marine Corps prevention and response measures, followed by a discussion of initial and specialized training for Marine 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. Finally, I intend to 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

The Marine Corps conducts specialized training across all ranks to ensure that all leaders have a clear understanding of sexual assault prevention mechanisms throughout the Marine Corps. 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, and the fostering of healthy relationships. In addition, Marines of all ranks receive annual training on the laws and policies governing sexual assault, reporting options, and sexual assault and retaliation prevention. This training was recently augmented to include small-group discussions and practical application exercises.

Judge advocates are involved throughout these training processes. At the headquarters level, judge advocates assist in developing and reviewing proposed training plans and content to ensure its legal accuracy. Judge advocates also often assist in delivering this training at the unit level.

SEXUAL ASSAULT RESPONSE

Judge Advocate Training. Training focused on the enhanced victim protections in the Military Justice Act (MJA) of 2016 represents another vital part of our prevention and response efforts. The MJA of 2016 represented a sea change to the military justice system, resulting in significant changes to the court-martial process. Many of these changes involved the enhancement of existing protections for victims throughout the military justice process. The new Article 132 specifically prohibits retaliation, which has been prohibited by various orders and regulations in the past. A provision in Rule for Court-Martial 405 imposes greater restrictions on how evidence regarding a victim's sexual behavior or predisposition can be used at preliminary hearings prior to referring

charges to a general court-martial. Further, rules and procedures have been added which focus on protecting a victim's privacy and ensuring victims have the right to be heard.

Throughout 2018, the Marine Corps legal community completed a phased training plan which included 24 hours of in-person instruction on the MJA of 16 changes. The training included significant instruction on protecting victim's rights, as well as preventing and punishing retaliation. Additionally, all staff judge advocates were required to train commanders with General Court-Martial or Special Court-Martial convening authority on changes to the law.

Ensuring Expert Litigation Training. The Marine Corps ensures expert litigation of sexual assault cases through both structure and training. The provision of legal services, including litigation support, is provided through four Legal Services Support Sections (LSSS), each responsible for a geographic region. Until 2012, legal centers in the Marine Corps were decentralized and operated independently of each other. In 2012, the Commandant directed a regionalized model that could better leverage training and experience to provide the proper level of expertise on the most complex courts-martial. Now, each region is able to capitalize on additional resources, such as Regional Trial Counsel, Complex Trial Teams, Regional Trial Investigators, and Civilian Litigation Attorney Advisors, in the litigation of sexual assault cases.

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 have the required experience, maturity, and temperament, 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, and also allows for more effective tracking, assignment, and career development.

Prosecution of Sexual Assault Cases. Sexual assault cases are among the most complex types of cases to prosecute. From FY12 to FY14, the number of contested sexual assault prosecutions in the Marine Corps more than tripled. By FY17, 38% of all general courts-martial were contested. In FY18, the Marine Corps tried 158 cases at general courts-martial, a 25% increase over the previous year. All of these trends confirm that the types of cases prosecuted in the Marine Corps are becoming increasingly complex, and are more likely to be contested cases prosecuted at general courts-martial. Equipping and training prosecutors to litigate these complex cases remains a top priority.

All trial counsel (TC) must meet the minimum requirement 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), which 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 mentors first tour TC who are assigned to their cases for the purpose of gaining the experience necessary to obtain their SVIP qualification.

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. LAAs are stationed across the Marine Corps, with each assigned to an RTC. The LAAs collaborate with TCs on 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 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. TCs 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. The Marine Corps established its Victims' Legal Counsel Organization (VLCO) in 2014 to provide legal representation to qualifying victims. The VLCO is comprised of 18 active duty full-time judge advocates, and includes an Officer-In-Charge (OIC), a Deputy OIC, four supervisory Regional Victims' Legal Counsel (RVLC), and 12 Victims' Legal Counsel (VLC). These counsel are distributed across the same four LSSS regions as their TC and DC counterparts.

Marine Corps VLCs attend Special Victims' Counsel Certification training at either The Army Judge Advocate General's Legal Center and School (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 MJA of 16 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 records 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 L.L.M. in criminal law leads DCAP, and DCAP also employs two civilian GS-15 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. The 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 in the Marine Corps, from initial report through victim counseling and adjudication. Whether the initial report is restricted or unrestricted, the Marine Corps assigns VLCs 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 obligations related to providing support for victims and ensuring a fair military justice process for alleged offenders.

When advising a commander, the SJA relies on the TC to 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. The CAM must also record the victim's preference regarding jurisdiction and disposition.

Protecting all 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 help eliminate retaliation by advocating for clients.

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 efforts by harnessing senior leadership perspectives and experience in determining on how best to implement Task Force efforts.

New punitive order addressing prohibited 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 Marine Corps Order 5354.1E on Prohibited Activities and Conduct (PAC). This order addresses a wide spectrum of conduct including hazing, discrimination, sexual harassment, social media misconduct, and retaliation against victims or those who report criminal offenses. This 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 abusive conduct and hold offenders accountable through administrative, disciplinary, and criminal charges,

where appropriate. Training all Marines on this new order was a vital part of the Marine Corps' efforts in 2018 to further develop a culture where sexual assault and retaliation are not tolerated.

THE COMMANDING OFFICER'S RESPONSIBILITY

Commanders are responsible and accountable for the morale, welfare, good order, and discipline of their units. This responsibility and accountability extends to every aspect of the command, including warfighting readiness and effectiveness and the discipline of the unit.

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 is fair and just.

Judge advocate advice and support to commanders is integral to this process. For all unrestricted reports of sexual assault, a Marine Corps TC works closely with criminal investigators to ensure unity between the investigative and prosecutorial functions of the military justice system. 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.

CONCLUSION

The Marine Corps legal community is 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

address sexual assault and eliminate it from our ranks. I look forward to working with Congress to meet our goals.