

**Testimony of MajGen Vaughn Ary,
Staff Judge Advocate to the Commandant of the Marine Corps
to
The United States Commission on Civil Rights
on
Sexual Assault in the Military**

January 11, 2013

Members of the Commission, thank you for the invitation to speak with you today about our efforts to combat sexual assault in the Marine Corps. I am eager to discuss what the Commandant of the Marine Corps is doing personally to lead the charge in the fight to eliminate sexual assault within our ranks. In the area of sexual assault, the Marine Corps today is significantly different from just one year ago. In 2012, the Commandant directed systemic and dramatic changes in our sexual assault prevention and response capabilities. The Commandant is changing our culture, and personally leading the way.

Commanders have always been responsible for readiness, unit cohesion, and morale. The Commandant understands that commanders are responsible for the safety of all Marines, victim care and services, and ensuring the fair trial of an accused. He also realized commanders could do better in these areas when it came to sexual assault. In June 2012, the Commandant issued his Sexual Assault Prevention and Response Campaign Plan, a three-phase strategy developed by an Operational Planning Team (OPT) whose members the Commandant personally selected. Chaired by a general officer and comprised of highly respected senior officers and enlisted Marines, the OPT used the same planning techniques and processes we use to engage the enemy on the battlefield. The OPT aggressively analyzed the problem of sexual assault in our ranks, looking for solutions across the wide spectrum of prevention and response. The resulting Campaign Plan is a commander-led, holistic approach that improves our ability to prevent and respond to sexual assaults. Our goal is to change behaviors—the behavior of those who might commit sexual assault and those who respond to it. This change began with the Commandant. In a November 2012 interview, the Commandant said, “Classes are being held, not by a 21-year-old corporal, but the General Officer, the Colonel, and the Sergeant Major. So this is a fight. It won’t be won this year or next. Will we get there? We’re part of society. But, we are determined to eradicate sexual assault in the Marine Corps. It’s a personal thing with me.”

My testimony today will be grouped around three key areas: prevention, response, and the future.

Prevention

When we talk about preventing sexual assault, the Commandant uses the phrase “get to the left of the problem.” That means using training, policies, and initiatives to help us stop sexual assault before it takes place. In step with the Campaign Plan, our Sexual Assault Prevention & Response (SAPR) Office implemented large-scale Corps-wide training initiatives, utilizing a top-down leadership model. The dominant message in SAPR’s training model is for leaders to foster a climate where misconduct or crime—especially sexual assault—is not

tolerated. SAPR training remains unequivocal in its assertion, however, that the inherent duty of preventing sexual assault belongs ultimately to Marines of every rank. The Campaign Plan was executed in three Phases, each with different goals.

Phase I of the Campaign Plan, the “Strike” phase, focused on significantly increasing the quality and quantity of prevention-based training. It began with the publication of a CMC White Letter (a personal communication from the Commandant reserved for important issues) in May 2012. This White Letter was addressed to all Marines and charged them with creating an environment and command climate in which every Marine is treated with dignity and respect, and all Marines—whether victims or witnesses—are encouraged to report allegations of sexual assault. In July 2012, the Commandant directed every Marine general officer to attend a two-day SAPR General Officer Symposium (GOS), at Marine Corps Base Quantico. This two-day training event included subject matter experts who spoke on topics relevant to prevention, the use of alcohol as a weapon, inadvertent victim blaming, and dispelling myths. A similar symposium was held in August 2012 for all Marine Sergeants Major. Building on the momentum of these personal interactions with his leaders, the Commandant also directed three focused training initiatives on sexual assault. The first initiative was Command Team Training for commanders and their senior staff. This consisted of one and one-half days of training presented in the form of guided discussion, case studies, Ethical Decision Games (EDGs), and SAPR Engaged Leadership Training. The second initiative was “Take a Stand” training for all non-commissioned officers. Comprised of videos, mini-lectures, guided group discussions, and activities, this training was geared toward establishing a positive command climate that encourages Marines to intervene, to “step up and step in,” to prevent sexual assault among fellow Marines. The third training initiative was “All Hands Training,” required for all Marines and attached Navy personnel in the form of informal lectures, guided discussions, and EDGs. Presented by Commanding Officers, Sergeants Major and leaders across the Corps, “All Hands Training” relayed the Commandant’s message that he “expects Commanding Officers, Officers-in-Charge, and senior enlisted to spare no effort in changing the prevailing conditions and attitudes that are allowing this crime to happen among our ranks.” The Commandant also traveled around the world between the spring and fall of 2012 speaking to Marine leaders about “who we are” as Marines and what it means to uphold the integrity of the title “Marine.” Although these “Heritage” speeches discussed a variety of issues, a main focus was the Commandant’s personal interest in changing behavior so that we prevent sexual assaults from occurring, and if they do occur, that Marines are comfortable and confident enough in their leadership and the military justice system to report an allegation of sexual assault.

Phase II of the Campaign Plan, the “implementation” phase, focuses on customizing the Phase I SAPR training, along with improving the Marine Corps’ response capability. Phase II began on November 10, 2012 and will last for six to twelve months. Training is being developed that is specific to different phases of military education, such as delayed entry accession programs, Recruit Depots, entry-level schools, Primary Military Education (PME) schools, Commanders and Senior Enlisted Courses, officer PME schools, and the pre-deployment environment. Annual training requirements are also being customized in a manner specific to grade. This building block approach will ensure training remains fresh and in accord with a Marine's knowledge and experience. Phase II also implemented changes in how to respond to sexual assaults, which I will discuss in the next section.

Phase III of the Campaign Plan is conditions-based. Most notable among these conditions is the assessed success of Phases I and II, and the integration of other programs into a holistic, truly sustainable effort.

Response

The second main area of my testimony today deals with responding to sexual assault when it does occur. It is important to note that when we talk about responding, there are actually two things we are responding to, the victim and the alleged crime. Each of these requires separate processes, involving different goals, personnel, procedures, and burdens.

Victim Response

In terms of victim response, the Marine Corps pursued several victim care initiatives in Fiscal Year 2012 (FY12). We believe these initiatives dramatically increased victim care and are the most effective use of the resources we have available to assist victims. Our Victim Advocates are well equipped to establish a close and supportive relationship with victims, and to help them understand the supportive services that are available. Our first major initiative was based on the realization that our prior approach of using part-time Uniformed Victim Advocates could be improved by professionalizing the job and hiring trained civilian professionals in our Sexual Assault Response Coordinator (SARC) and Victim Advocate (VA) billets. In FY13 we will hire 25 full-time civilian SARCs and 22 civilian VAs, strengthening SAPR presence and allowing for more consistent and thorough quality assurance measures throughout the Marine Corps. These civilian hires must have a four-year degree in behavioral health or social sciences, and have three years of experience in their civilian field of expertise or equivalent qualifications. In addition, they will also receive SAPR's military-specific victim advocacy training, which was approved by the National Advocacy Credentialing Program. Spanning a total of 40 hours, the SAPR training discusses every aspect of the Marine Corps SAPR program.

The Marine Corps is also improving how we provide victim services. Phase II of the Campaign Plan focuses on implementing a regional Sexual Assault Response Team (SART) model. The SART will provide comprehensive victim care that extends outside the boundaries of any one response service (i.e., medical, legal, counseling, etc.). With the overall goal of correcting the sometimes fragmented approach to victim care, SARTs will work towards reducing the number of times victims must repeat their stories and provide a more holistic response to all victims. The Marine Corps is working with The Navy Bureau of Medicine and Surgery (BUMED) and the NCIS Adult Sexual Assault Program (ASAP) as we build SART teams regionally. The ASAP utilizes a team response to adult sexual assault cases to increase efficiency and the expeditious handling of cases. Members of ASAP will receive dedicated sexual assault training from the Special Agent Basic Training to the Supervisor levels.

Other victim care initiatives included the continued enhancement and promotion of the 24/7 Sexual Assault Help Lines, established at every Marine Corps installation, along with detailed procedures for the expedited transfer of victims from their units upon their request. Additionally, on October 1, 2012 we transitioned to the full use of the Defense Sexual Assault

Incident Database (DSAID), which will standardize data to support planning and evaluation of training and prevention activities, the creation of new programs and policies, increasing the effectiveness of response efforts, and ensuring compliance with policy.

In addition to the victim advocate systems already in place, the Marine Corps also implemented 10 U.S.C. §1565b, which makes legal assistance, assistance by a SARC, and assistance by a sexual assault victim advocate available to victims of sexual assault. Additionally, 10 U.S.C. §1565b requires that victims of sexual assault be informed of the availability of such services as soon as practical after the victim reports the sexual assault. The Marine Corps uses legal assistance attorneys to provide victims information about the following areas: (1) the Victim and Witness Assistance Program (VWAP), including the rights and benefits afforded the victim, such as the victim advocate privilege; (2) the differences between the two types of reporting in sexual assault cases (restricted and unrestricted); (3) the military justice system, including the roles and responsibilities of the prosecutor, defense counsel, and investigators; (4) services available from appropriate agencies or offices for emotional and mental health counseling and other medical services; (5) the availability of and protections offered by civilian and military protective orders; and (6) eligibility for and benefits potentially available as part of the transitional compensation program. Additionally, prosecutors will explain to victims how their privacy is protected under the military rape shield rule, Military Rule of Evidence (M.R.E.) 412.

Legal Response

In terms of the legal response to an alleged sexual assault, the Marine Corps has just executed a major overhaul in the way we prosecute complex cases. When I discussed a culture change earlier, I mentioned that we are changing the behavior of individual Marines, but we have also changed the organization of our legal community. Our analysis of ways to improve sexual assault prosecutions uncovered a broader overall trend in military justice. We noticed an increase in complex and contested cases as a percentage of our total docket. We realized that our historical model of providing trial services needed to be revised to better handle these complex cases, many of which involve sexual assault. The Commandant directed us to reorganize our legal community into a regional model that gives us the flexibility to better utilize the experience and supervision of our more experienced prosecutors. Practically speaking, our new regional model, which became fully operational on October 1, 2012, allows us to place the right prosecutor, with the appropriate expertise, supervision, and support staff, on the right case, regardless of location.

Our legal reorganization greatly increases the experience, training, and expertise available for prosecuting complex cases like sexual assaults. We reorganized our 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. Within the RTC is a Complex Trial Team (CTT) that gives us a special victims prosecution capability. The CTT contains a civilian Highly Qualified Expert (HQE), two experienced military prosecutors,

military criminal investigators, and a legal administrative officer who is a school-trained paralegal. The civilian HQE is an experienced civilian prosecutor who provides training and mentoring for all prosecutors in the region. Our HQEs are assigned to the actual trial shops, working directly with prosecutors, where we believe they will have the most impact.

The two military prosecutors in the CTT are selected based on experience, training, and demonstrated ability as successful litigators. To augment the experience they already bring to the billet, we are beginning to send these prosecutors to the Army's two-week course for sexual assault investigators at Fort Leonard Wood to help them better understand the most current techniques used to investigate sexual assault. The CTT prosecutors will either prosecute complex cases themselves, or train and assist other counsel in the region with complex cases. The criminal investigators and the legal administrative officer in the CTT 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 our prosecutors to focus on preparing their case.

To support our prosecutors further, we created a Trial Counsel Assistance Program (TCAP) at our Judge Advocate Division Headquarters. Our TCAP consolidates lessons learned from throughout the Marine Corps and provides training and advice to our prosecutors in each region. The TCAP provides specialized training through regional conferences focused on the prosecution of sexual assaults. These training events include speakers on law enforcement techniques, victim and offender typology, expert witnesses, forensics, and the art of persuasion. We also use our reserve judge advocates who are experienced criminal prosecutors in their civilian jobs to teach and mentor our active duty judge advocates during these conferences and in specific cases. To ensure an adequate level of experience and supervision not only at the headquarters level, but also in each LSSS, we also 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 military justice billets so that billet holders must possess a Master of Laws degree in Criminal Law.

Although the focus of my presentation so far has been on the prosecution of sexual assaults, I must carefully balance our ability to prosecute sexual assaults with our ability to defend Marines accused of sexual assault. As concerned as I am that I have well-trained and competent prosecutors, I am equally concerned that each Marine accused receives a constitutionally fair trial that will withstand the scrutiny of appeal. To that end, we recently reorganized the previously decentralized defense bar within the Marine Corps into the Marine Corps Defense Services Organization (DSO) under the centralized supervision of the Chief Defense Counsel (CDC) of the Marine Corps. This change was designed to enhance the independence of the Marine Corps DSO while also enhancing the efficiency and effectiveness of the superb defense counsel services that Marine defense counsel have always provided Marines and Sailors. Like the prosecution, the DSO has focused heavily on sexual assault cases to ensure each case is handled professionally, zealously, and effectively.

In addition to the organization, staffing, and training changes we have recently made to improve our ability to prosecute complex cases, we have also elevated the authority level required to dispose of an alleged sexual assault. On April 20, 2012 the Secretary of Defense (SecDef) issued a memorandum withholding initial disposition authority in certain sexual assault offenses to the O-6 special court-martial convening authority (SPCMCA) level. The SecDef withheld the authority to make a disposition decision for penetration offenses, forcible sodomy, and attempts to commit those crimes. The Commandant of the Marine Corps expanded the scope of the SecDef's withhold policy to cover penetration *and* contact sex offenses, all child sex offenses, and attempts to commit such offenses. The Marine Corps also made it clear that in no circumstance could the Sexual Assault Initial Disposition Authority (SA-IDA) forward a case down to a subordinate authority for disposition, regardless of the disposition decision the SA-IDA felt was appropriate.

The Future

I firmly believe that our efforts in the areas of victim services, legal reorganization, the continued training of criminal lawyers, and the elevation of the initial disposition authority will improve our ability to prosecute sexual assault offenses in military courts-martial. All of these changes allow us to remain a commander-driven system of military justice, while ensuring proficiency in the litigation of complex cases. We must keep in mind, however, that these changes have not been made in a vacuum. In June 2012, a new UCMJ Article 120 took effect, but the implementing guidance for this new statute has not yet been approved in an Executive Order. Additionally, we have a new rule of evidence dealing with a victim advocate privilege. These statutory and evidentiary changes will significantly impact sexual assault courts-martial. I look forward to the next year; I believe all of these changes, internal and external to the Marine Corps, will go a long way to eradicating sexual assault in our ranks. However, with regard to the rules and regulations that govern a commander's handling of sexual assault, I caution against a system of perpetual change. We need to give these changes a chance to work, before we negate or contradict them with more changes. I believe we need time for all of the recent changes I have mentioned to reach their full potential.

Again, I thank you for the opportunity to speak with you today about how we handle sexual assault in the Marine Corps. The Commandant is aggressively attacking sexual assault with initiatives in the areas of prevention and response. We are eager to have the chance to implement these changes fully, collect lessons learned, and refine our efforts to eliminate sexual assault from our ranks.