

October 22, 2013

The Hon. Carl Levin, Chairman
Committee on Armed Services
United States Senate
269 Russell Senate Office Building
Washington, D.C. 20510

The Hon. Buck McKeon, Chairman
Committee on Armed Services
United States House of Representatives
2310 Rayburn House Office Building
Washington, D.C. 20515

RE: Major James Weirick, USMC

Senator Levin and Representative McKeon,

We, the undersigned, write to you as retired or former Marine Corps and Navy officers and judge advocates. We are greatly concerned that the Commandant of the Marine Corps, General James F. Amos, and one or more of his most senior legal advisers appear to have (1) deprived Marines of due process in military justice proceedings; (2) made misleading statements under oath about these activities; (3) engaged in abuse of the legal discovery process investigating this misconduct; and (4) endeavored to besmirch and disparage the reputation and career of the one Marine lawyer who, at great risk to his military career, did the right thing and reported all of this to the Inspector General of the Department of Defense. We ask that you commence a prompt investigation into these events, utilizing your oversight responsibilities to the fullest extent permitted by law.

The enclosed documents strongly suggest that on February 10, 2012, General Amos relieved and replaced Lieutenant General Thomas D. Waldhauser, who was serving as the relevant Convening Authority, to ensure his own wishes and pre-determined outcomes in at least one, and perhaps other, military justice proceedings resulted. To preserve due process and fundamental fairness in the military justice system, such action is plainly impermissible under Rule 104 of the Manual for Courts-Martial. It is prohibited as “unlawful command influence” which has long been described in military appellate courts as “the mortal enemy of military justice.”

Of greater concern is that the Commandant of the Marine Corps later provided what appear to be misleading written responses, sworn to and thus made under oath, to an inquiry about his actions. The Commandant and his lawyers then failed to turn over the very documents that tended to prove that unlawful command influence had, in fact, occurred – even though these documents were requested and required to be produced in order to comply with pending discovery obligations. Worst of all, the one person who had the moral courage to report on these events fully, Major James Weirick, USMC, was relieved from his job duties as a deputy staff judge advocate, reassigned and relegated to a non-legal job.

Major Weirick filed a whistleblower complaint with the Inspector General of the Department of Defense detailing these events. In addition to being relieved from duty, Major Weirick has since been unfairly painted as mentally unstable, and publicly compared in a press release by the Commandant’s top civilian lawyer, Mr. Robert Hogue, to a mass murderer who recently killed 12 innocent people in the Washington Navy-Yard. See *Marine Commandant’s Lawyer: Whistleblower’s Email a Red Flag After Navy Yard Massacre*, MARINE CORPS TIMES, October 1, 2013. Such tactics appear to be designed to discredit Major Weirick in an attempt to insulate the Commandant and his lawyers from the forthcoming report and conclusions of the Inspector General of the Department of Defense concerning these disturbing events.

A Congressional inquiry into these facts and circumstances – to the extent not already underway – should be strongly considered. Our country is entitled to trust her Marines completely, and that trust starts first and foremost with the Commandant himself. Congress should not sit idly by when there are indications that the Commandant of the Marine Corps may have (1) engaged in or permitted unlawful command influence in the Courts-Martial process; (2) submitted or caused to be submitted misleading statements; (3) abused the legal discovery process; and/or (4) condoned the character assassination of a Marine – James Weirick – who had the moral courage to speak out when he observed the rule of law being cast aside at the highest leadership level. To be sure, Major Weirick should be congratulated, and most certainly not condemned, for bringing these issues to the forefront. We urge you to exercise your oversight responsibilities and fully explore these events so that due process, fundamental fairness, and most of all, integrity, remain most revered within the military justice system and in the traditions of the United States Marine Corps.


Semper Fidelis,



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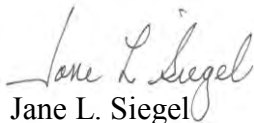
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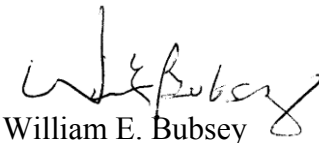
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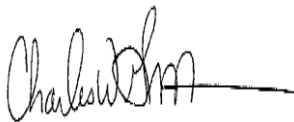
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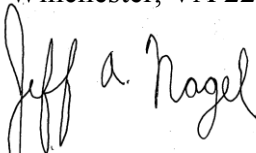
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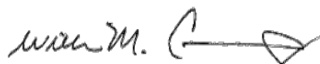
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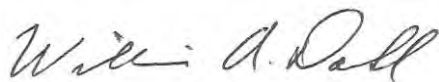
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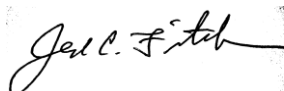
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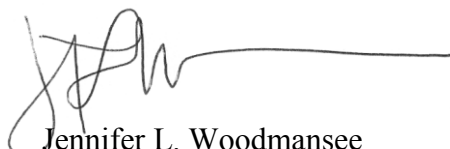
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Enclosures as stated

Enclosure 1



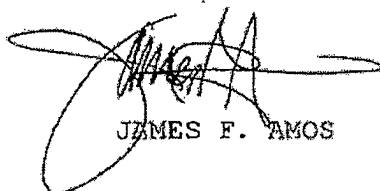
DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:
5800
JA

10 FEB 2012

From: Commandant of the Marine Corps
To: Commander, U.S. Marine Corps Forces, Central Command
Subj: WITHDRAWAL OF CONSOLIDATED DISPOSITION AUTHORITY FOR ANY
APPROPRIATE ACTION RELATIVE TO THE ALLEGED DESECRATION OF
CORPSES BY U.S. MARINES IN AFGHANISTAN
Ref: (a) CMC ltr 5800 JAM of 13 Jan 2012

1. In reference (a), I designated you as the Consolidated Disposition Authority (CDA) for the alleged desecration of corpses by U.S. Marines in Afghanistan.
2. I believe some of my comments during our recent conversation could be perceived as possibly interfering with your independent and unfettered discretion to take action in these cases. To protect the institutional integrity of the military justice process, and to avoid any potential issues, I withdraw your CDA designation.



JAMES F. AMOS

002210

Enclosure 2

**U.S. NAVY-MARINE CORPS TRIAL JUDICIARY
NORTHERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL**

UNITED STATES

v.

**TARRELL D. JILES
Staff Sergeant (E-6)
U. S. Marine Corps**

**Response to Court Ordered
Interrogatories**

31 July 2012

I, General James F. Amos, U.S. Marine Corps, provide the following responses to the Court ordered interrogatories dated 23 July 2012:

Question 1. Please state the date and location of every "Heritage Brief" that you delivered in 2012.

- 2 April MacDill AFB, Tampa (locally stationed Marines)
- 18 April MCAS Cherry Point, NC (2d MAW)
- 19 April MCB Camp Lejeune, NC (II MEF)
- 19 April MCAS New River, NC (2d MAW, MARSOC)
- 20 April MCAS Beaufort, SC (2d MAW, MCAS)
- 20 April MCRD Parris Island, SC
- 23 April Naval War College, Newport, RI (locally stationed Marines)
- 24 April MCB Quantico, VA
- 1 May Peterson AFB, Colorado Springs, CO (locally stationed Marines)
- 21 May MCAS Yuma, AZ
- 21 May MCB 29 Palms, CA
- 22 May MCRD San Diego, CA
- 22 May MCAS Miramar, CA
- 23 May MCB Camp Pendleton, CA
- 30 May Pentagon, VA (NCR Marines)
- 31 May MBW, Washington, DC
- 1 June MCB Quantico, VA
- 11 June Stuttgart, Germany (locally stationed Marines)
- 22 June MCB Camp Smith, HI
- 22 June MCB Kaneohe Bay, HI
- 24 June MCAS Iwakuni, Japan
- 25 June MCB Camp Butler, Okinawa, Japan

- 25 June MCB Camp Hanson, Okinawa, Japan
- 9 July MARFORCOM, NAS Norfolk, VA
- 24 July New Orleans, LA (MARFORES Marines)

Question 2. Was the content of each Heritage Brief essentially the same at each location?

Essentially the content of the brief has remained the same since first delivered. Like any brief, it changed slightly over time based on feedback and my sense of the audience's reaction. Any changes to the brief were slight and made in order to make it a more effective communication tool.

I intended my Heritage Briefs to be an efficient and effective way for me to communicate to my Marines about our ethos. I personally built the brief to speak to Marines about WHO WE ARE...AND WHO WE ARE NOT. These briefs are about proper conduct as Marines. As Marines, we are accountable to the institution, ourselves, and to others to create the conditions that stop misconduct before it occurs. I want to prevent Marines from getting themselves into the type of trouble that erodes our character and brings shame on the institution.

Most importantly, I wanted to appeal to the fundamental goodness residing in each Marine that becomes a part of their life at Boot Camp, or at Quantico for Officers. As the Commandant, I wanted to prick the soul of the institution and wake it up; I wanted to get our 'moral compass' back to True North. As I said in White Letter 3-12, "As Commandant, I have no greater responsibility to our institution than to ensure that our Corps adheres to the legendary high levels of discipline and professionalism expected of us by the American people."

In the brief, I used a few limited historical examples found in the public domain to frame the context—illustrating that certain activities are not only illegal, but are just plain inconsistent with WHO WE ARE as a Corps. At no time did I directly or indirectly intend to dictate any course of action in any particular case or type of cases. Based on my interaction with the audiences, I don't believe they misunderstood me or erroneously concluded that I was directing them to hold any particular point of view about these issues.

Question 3. In the Manual for Courts-Martial, Rule for Courts-Martial 104. Unlawful command influence. Section (a): General Prohibitions, states: "No convening authority or commander may censure, reprimand, or admonish a court-martial or other military tribunal or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court-martial or tribunal, or with respect to any other exercise of the functions of the court-martial or tribunal or such persons in the conduct of the proceedings."

Question 3a. Were the Courts-Martial and the Board of Inquiry discussed during the Heritage Brief, actual cases?

Yes. I used the term "Courts-Martial" on two occasions during the brief. I spoke to the LCpl Lew hazing and suicide matter that had already concluded at 3rd Marines in Kaneohe Bay,

Hawaii. I also spoke to a headline from a Brazilian newspaper about three Marines from the American Embassy who allegedly sexually assaulted a local woman a year ago.

I referenced a BOI that I remembered reading about many years ago, could have been when I was CG of 3d MAW, CG of II MEF or during my time as ACMC (honestly cannot remember), that dealt with a male Captain having an affair with a female Cpl whose husband was deployed overseas in combat. As I recall, the Capt eventually ended up at a BOI, and while the charges were substantiated by the members, he was nonetheless allowed to remain on active duty.

Not once do I remember speaking to the matter of Courts-Martial or BOIs from a perspective of criticism of due process, or in an attempt to shape the outcome of future proceedings.

Question 3b. Why did you discuss the results of the courts-martial and Board of Inquiry during the Heritage Briefs?

As stated in 3a above, as I recall, I used the term "Courts-Martial" on two occasions during each brief. For the LCpl Lew matter, I did not discuss the legal proceedings at all other than to say that the judge had set aside the allegations of hazing in each case. For the matter in Brazil, I routinely said that I did not know whether the Gunny and his two MSG Marines received Courts-Martial or NJP. I still don't know what precise legal process was used by the Commanding Officer.

I referred to the BOI case because I recall being perplexed at the time that a Board, after considering the Capt's heinous actions that were substantiated by the Board members, would believe that continuation of his further service as an officer in the Marine Corps was even appropriate or in the best interests of the Marine Corps. I don't know all of the facts that they considered before making their determination. I referred to these matters to provide context to my leadership concerns.

Not once did I intend to criticize the due process of our courts-martial system.

Question 4. On 23 May 2012, you gave the Heritage Brief speech at Marine Corps Base Camp Pendleton, California. In opening the brief, you spoke words to effect of "My lawyers don't want me to talk about this, but I'm going to anyway. The defense lawyers love when I talk about this, because then they can throw me under the bus later on and complain about unlawful command influence."

Question 4.a. Why did you make a point of telling the assembled Marines that you were in essence disregarding the legal advice that had apparently been provided?

That is not what I was saying at all: I did not disregard the advice of my Counsel and SJA (my direct legal advisors). I take their counsel seriously and I always carefully consider their

advice. They, more than most, fully appreciate the serious and enduring responsibilities that a Commandant has to ensure the consistent presence of good order and discipline. The phrase "my lawyers" is far broader than just the two individuals specifically charged with being my senior legal team. I have hundreds of lawyers working throughout our Corps; many of whom would prefer I steer clear of sensitive and difficult topics in order to avoid any potential legal conflicts and review. I do not have that luxury. As the Commandant, I must address difficult topics and I have advisors who help me do that while staying within the bounds of the rules. For example, I believe that it would be appropriate to speak to my Marines about the dangers of drunk driving and substance abuse, even if these topics are matters pending trial somewhere in the Corps.

In fact I made it a point while showing high profile headlines to not drill down in any particular case, rather I wanted the Marines in the audience to step back from the details and consider the impact to the Corps and to our international efforts in Afghanistan, and elsewhere around the globe. A review of the Heritage Brief that is posted on the USMC Web Site will verify this matter. Finally, the responsibility for leading our Marines and our Corps, which includes a responsibility for overseeing good order and discipline—maintaining our moral compass, is the purview of the Commandant.

Question 4.b. In making the aforementioned statement, were you attempting to convey to the assembled Marines that your desires are more important than following the law?

The question, as written, seems to imply that my desires are inconsistent with the law. To the contrary, my decisions and actions are, and have always been, founded on and consistent with the law. I direct that all of my Marines follow the law. If any Marine were to conclude that I desire otherwise, they would be mistaken. In fact, my recent publication of CMC White Letter 3-12 titled "Leadership" unambiguously articulates my strong support of our Military Justice System. I strongly believe that any Marine who heard my Heritage Brief would clearly understand that they are to follow the law.

Question 5. Have you had any discussions with either Colonel D. J. Choike, USMC or Colonel David Maxwell, USMC, the prior and current Commanding Officer of MCB Quantico regarding the case of U.S. v. SSgt Tarrell D. Jiles, USMC? If so, what specifically did you discuss?

I have no knowledge of any matters regarding SSgt Jiles, or charges pending in his case. In fact, his name appearing in question #5, is the first time that I have seen or heard anything official about this Marine. I have not spoken to Col Choike in many months. On those occasions where I have spoken with Col Choike, we did not speak about any courts-martial. I have never met or spoken to Col Maxwell to the best of my knowledge.

Question 6. Commandant of the Marine Corps White Letter 2-12 is addressed to "All Marines." The target audience of the Heritage Brief was all officers and Staff NCOs. CMC White Letter 3-12 is addressed to "All General Officers, All Commanding Officers, All Officers in Charge, All Sergeants Major, Master Gunnery Sergeants, and Command Master Chiefs."

Question 6.a. Why are the addressees of these two closely related White Letters different?

The addressees of the letters are different because the letters serve different purposes. White Letter 2-12 is addressed to - All Marines – because the entire subject matter was Sexual Assault. Addressing it to - All Marines - was fitting since the problem of Sexual Assault is a Corps-wide problem and can only be resolved with an all-out effort by every member of the institution.

White Letter 3-12 targeted the Corps' senior leaders and decision makers. By purposefully addressing this White Letter titled – Leadership – to the senior leadership of the Corps, I acknowledged that addressing the four themes within the Heritage Brief requires their direct involvement and leadership. My goal is to prevent misconduct from happening in the first place...we cannot turn matters around without their help. Furthermore, I confirm in the White Letter my strong support for the military justice system to the Marines who are most accountable for fulfilling their responsibilities as Commanders and Convening Authorities under the UCMJ. My precise words were "My intent is not to influence the outcome or response in any particular case, but rather to positively influence the behavior of Marines across the Corps. As senior leaders, we have the inherent responsibility to ensure the sanctity of our justice system, this includes the presumption of innocence unless proven otherwise."

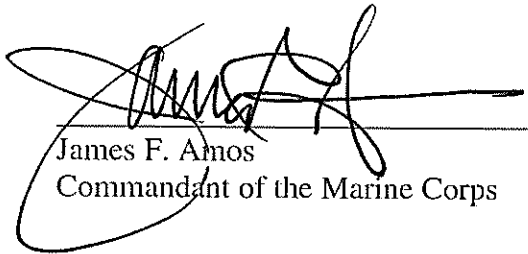
Question 6.b. Why was White Letter 3-12 not addressed to the target audience of the Heritage Brief, All Officers and Staff NCOs?

White Letter 3-12 was addressed to "All General Officers, all Commanding Officers, all Officers in Charge, all Sergeants Major, all Master Gunnery Sergeants, and all Command Master Chiefs." I consider this body of senior leaders a subset of the overall Heritage Brief target audience...ie, "All Officers and SNCOs." There is no boilerplate format for White Letters or how they shall be addressed, that is the purview of the Commandant since the letters are personal and come directly from him.

Again, as stated above "by purposefully addressing this White Letter titled – Leadership – to the senior leadership of the Corps, I acknowledged that addressing the four themes within the Heritage Brief requires their direct involvement and leadership." We cannot teach individual accountability and turn matters around without them. These leaders are the decision makers and the folks who truly influence behavior and institute course and speed corrections within our institution...thus I decided to specifically focus my attention on them. My goal is for them to set the example and prevent misconduct before it occurs.

I also intended the widest dissemination of the message in White Letter 3-12 through these leaders. White Letter 3-12 ends with my intent, as stated at the General Officers Symposium, for my Commanders and Convening Authorities to "ensure the content and intent behind this White Letter is discussed in detail with each of their commanders and throughout their organizations."

I, James F. Amos, Commandant of the Marine Corps, being first duly sworn, swear or affirm that the matters stated herein are true to the best of my information, knowledge and belief.



James F. Amos
Commandant of the Marine Corps

Subscribed and sworn before me this 31st day of July, 2012, by James F. Amos, Commandant of the Marine Corps.



Eric A. Catto
Captain, USMC

Authorized to administer oaths pursuant to 10 U.S.C. § 936

Enclosure 3

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT

UNITED STATES)	SPECIAL COURT-MARTIAL
)	
v.)	
)	
JAMES V. CLEMENT)	DECLARATION OF
CAPTAIN (0-3))	LIEUTENANT GENERAL
U.S. MARINE CORPS, and)	THOMAS D. WALDHAUSER,
)	U.S. MARINE CORPS
)	
ROBERT W. RICHARDS)	
SERGEANT)	
U.S. MARINE CORPS)	

I, Lieutenant General Thomas D. Waldhauser, U.S. Marine Corps, Declarant, hereby declare as follows:

1. In January 2012, I was the Commanding General of Marine Corps Forces, Central Command ("MARCENT") and I Marine Expeditionary Force ("I MEF"). Through media releases and notifications from my chain of command, I became aware of internet videos of U.S. Marines urinating on enemy Taliban corpses in Afghanistan.

2. On or about 11 January 2012, I contacted Headquarters Marine Corps and offered to assume jurisdiction of these cases. I believed there was a possibility the Marines involved in the incident were from or currently with various units throughout the Marine Corps. Consequently, based on previous instances where Marines from disparate commands were involved in the same case, it was my view the MARCENT legal team — and I as the MARCENT Commander — were uniquely qualified to assume jurisdiction.

3. On 13 January 2012, my authority to dispose of these cases was memorialized by General James F. Amos, the Commandant of the Marine Corps ("CMC") in a written appointment letter, whereby I was designated the Consolidated Disposition Authority ("CDA"); in the appointment, the CMC let it be known that I would "exercise completely independent judgment on the disposition of these cases."

4. I initiated a command investigation, appointing Lieutenant General Steven A. Hummer as Investigating Officer. Additionally, I took steps to initiate a Naval Criminal Investigative Service ("NCIS") investigation as well as make appropriate Law of War Notifications. Finally, I informed the CMC of these actions.

5. To my knowledge, while I was the CDA, there was never consideration given to classifying the overall command investigation or any other information related to the case. I do not recall ever discussing this topic with my legal team.

6. During January 2012, I became aware the four Marines depicted in the urination video were a Staff Sergeant who was the 3d Battalion, 2d Marines ("3/2") Scout Sniper Platoon Commander; a Staff Sergeant who was the 3/2 Scout Sniper Platoon Sergeant; a Sergeant who was the 3/2 Scout Sniper Team 4 Team Leader, whose Marines conducted the mission out of which the video surfaced; and a Sergeant who was a member of Team 4. I also learned the Marine who had filmed the incident was a Sergeant and a Combat Engineer working with Sniper Team 4 on the mission. On 31 January 2012, I notified the CMC, via email, that each of the identified Marines had retained civilian defense counsel and each was engaged in disposition discussions with my Staff Judge Advocate ("SJA").

7. In an effort to determine the range of discipline that might be appropriate, I asked my MARCENT SJA and his team to research and explore how the military had dealt with prior instances of misconduct of this sort. Although not as egregious as the desecration cases, I was informed the punishment in cases involving "war trophies" or unauthorized photographs of enemy corpses etc. had been in the range of non-judicial punishment (NJP) and Letters of Reprimand. That said, I considered the 3/2 desecration cases to have been more egregious and thus may have warranted disposition at a higher forum.

8. On 31 January 2012, after being briefed by NCIS, and following discussions with the MARCENT Chief of Staff and SJA regarding the cases of the five individuals directly involved in the video, I provided a report of my progress and tentative plans to the CMC via email. In that email, I specifically noted I had ruled out referring any of the Marines to trial by General Court-Martial. I further indicated the MARCENT SJA had "started discussion with the defense counsel for the suspected Marines. The first one, defense counsel for Sgt Richard, appears agreeable to what I have in mind." To explain that statement, I had not at that point nor did I ever agree to any specific terms on any case. Instead, I had indicated a range that I had in mind to my SJA—in the case of Sergeant Richards, in the NJP/summary court-martial range. I had not received a specific proposal from the defense but understood from my SJA that the defense appeared amenable to something in that range.

9. The CMC and I agreed we would have a chance to discuss my report more completely when we met overseas during the following week, as our schedules took both of us to the Middle East. Interestingly, at the 31 January meeting, I had been informed NCIS would require two to three more months to go through all the evidence. Therefore, in my mind, the purpose of the meeting with CMC was two-fold: first, to inform him of the current status of the case and second, based on the evidence that still needed to be analyzed, to discuss the pace of moving forward with the cases. Simply stated, we could either move forward with the evidence available at that time or wait until all evidence was reviewed before taking any action.

10. On or about 7 or 8 February 2012, I met with the CMC in a Middle Eastern country. It was a private meeting between the two of us. I do not necessarily remember the exact words or sequence of what was said, but the CMC did make a comment to the effect that the Marines

involved needed to be "crushed." The CMC went on to say that he wanted these Marines to be discharged from the Marine Corps when this was all over.

11. I gave the CMC my then-current views regarding disposition, and told him that I was considering charging the Sergeants at a lower forum than the Staff Sergeants. Specifically, I was considering in the range of NJP or Summary Courts-Martial for the Sergeants and Special Courts-Martial for the Staff Sergeants. The CMC asked if those proceedings would result in the discharge of the Marines; I explained that discharges would not be an option for the Sergeants and that while it was an option for the Staff Sergeants at a Special Court-Martial, there was no guarantee. However, I also told the CMC it would ultimately be his decision whether to terminate these Marines' careers, because each of the Marines would eventually come up for re-enlistment. At that time, the CMC could prevent them from staying in the Marine Corps because of their involvement in this case, regardless of final disposition.

12. The CMC asked me specifically something to the effect of why not or will you give all of them General Court-Martials? I responded, "No, I am not going to do that," or words to that effect, stating that I did not believe any of the cases warranted General Court-Martial. The CMC told me that he could change the Convening Authority on the cases and I responded that would be his prerogative. At the end of the conversation, I told him I appreciated his input and I would take it under consideration as I moved forward with these cases. At that time the only final decisions I had made were that I would not send any of these Marines to a General Court-Martial, and that I would hold the Staff Sergeants to a higher level of accountability than the Sergeants.

13. The tone of the conversation was at times tense, but always professional. Although I was surprised by parts of the discussion, I believed I had maintained my independent role as a convening authority and that nothing about the conversation would have deterred me from continuing to do so. That is what I meant when I told the CMC I would take his input under consideration. After the conversation, we parted ways and went to our respective aircraft to continue to separate locations.

14. I immediately departed for the continental United States. A few hours later, my plane landed for crew rest and refuel in Europe, at which time I received a message to call General Joseph E. Dunford, Jr., the Assistant Commandant of the Marine Corps ("ACMC"). The ACMC said he was not sure what had happened during my conversation with the Commandant. The ACMC indicated the Commandant was upset and regretted the conversation he had with me. Additionally, the CMC said he felt he had put me, himself (the CMC), and the office of the Commandant in a bad position. The CMC indicated because of this, he was going to remove me as the CDA for these cases and that a formal letter would follow. I told the ACMC I understood, but this issue would likely come up again some time in the future. Because it was obvious the CMC had made a decision to replace me as CDA, I did not question the ACMC or CMC on the decision. In my view, the Commandant had acknowledged he made a mistake and this was his way of addressing it and moving forward.

15. On 10 February 2012, I received a letter from the CMC withdrawing my CDA designation. I was confident I could have remained on the case and maintained my independence and

discretion if I had been required to do so. I had never been removed as the convening authority of a case before.

16. On Sunday, 12 February 2012, the Commandant contacted me and we talked via Video Teleconference. He admitted that he had crossed the line and that replacing me as CDA was how he was going to fix that. He told me that if ever asked about the incident, I should simply tell the truth.

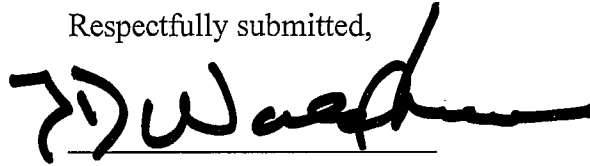
17. I did attend the Executive Off-Site ("EOS") in May of 2012. I understand that at this EOS there was a discussion of the urination incident but I did not attend this discussion nor at any other time did I discuss the matter or my conversation with the CMC with anybody at the EOS. I did not participate in any discussion about the urination incident nor did I agree to any recommended way ahead.

18. Since my removal as CDA in these cases, I have not spoken with anyone regarding these cases or the above-mentioned conversation with the CMC, until I was interviewed by Government Counsel and Defense Counsel in July 2013. I understood another convening authority was going to receive this case and that discussions about the case would not be healthy for the process or the independence of the new convening authority. I specifically have never discussed any aspect of this case with Lieutenant General Mills, the new convening authority.

[signature page follows]

19. The information contained in this Declaration is true and correct to the best of my knowledge.

Respectfully submitted,

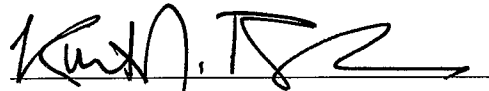


T. D. WALDHAUSER
Lieutenant General
United States Marine Corps

Acknowledgement

STATE OF VIRGINIA
COUNTY OF PRINCE WILLIAM

Before me this 23d day of July, 2013, the above-named Declarant, **Lieutenant General Thomas D. Waldhauser**, did swear or affirm that the information contained in the foregoing Declaration is true and correct to the best of said Declarant's knowledge.



KURT J. BRUBAKER
Colonel, U.S. Marine Corps
Officer in Charge, Legal Services Support Section, National Capital Region

Enclosure 4

**UNITED STATES NAVY-MARINE CORPS TRIAL JUDICIARY
NORTHERN JUDICIAL DISTRICT
SPECIAL COURT-MARTIAL**

UNITED STATES OF AMERICA

v.

Tarrell D. JILES
Staff Sergeant (E-6)
U.S. Marine Corps

SWORN DECLARATION OF

MAJOR JAMES W. WEIRICK,
U.S. MARINE CORPS

SEP 20 2013

I, Major James W. Weirick, USMC, provide the following statement:

1. I currently serve as the Deputy Staff Judge Advocate, Marine Corps Combat Development Command (MCCDC), a billet I have held since October 2012.
2. In January 2012, a video surfaced on YouTube that appeared to depict four U.S. Marines urinating on human remains. In February 2012, CG, MCCDC, LtGen R. P. Mills, USMC, was designated as the Consolidated Disposition Authority (CDA) for these cases, which involved Marines from Third Battalion, Second Marines (V3/2). As the CDA, LtGen Mills would act as convening authority on these cases.
3. The V3/2 cases received much media attention, as well as visibility from Headquarters Marine Corps (HQMC) and Judge Advocate Division (JAD). This high internal visibility was further heightened since these Marines were assigned to various units other than MCCDC for administrative issues. In sum, there were multiple matters to be addressed and tracked.
4. SJA, MCCDC, Col J. L. Gruter, USMC, assigned me a number of tasks involving the V3/2 cases. Two of the prominent issues I was handling were discovery and legal issues that could impact the appropriate litigation of the V3/2 cases.
5. One of the primary concerns in the V3/2 cases was the fact that LtGen T. D. Waldhauser, USMC, had been originally designated as the CDA for these cases, but for then-undisclosed reasons he was removed as the CDA and LtGen Mills was subsequently designated as the CDA by the Commandant of the Marine Corps, Gen J. F. Amos, USMC. This was a substitution of convening authorities for which, at the time, we, office of the SJA, MCCDC, were provided with no explanation from JAD.
6. In furtherance of my task of ensuring all discovery was properly provided to the defense in the V3/2 cases, I forwarded all discovery requests to JAD, HQMC. Additionally, on numerous occasions I called and sent emails concerning the need to provide discovery from Gen Amos and his military and civilian legal staffs. None of my emails were ever responded to.

7. Specifically, SJA, MCCDC, never received the memorandum from Gen Amos to LtGen Waldhauser of 10 February 2012 which withdrew LtGen Waldhauser's authority as CDA, or at minimum we had yet to receive this memorandum when I was reassigned to matters other than the V3/2 cases on 06 Jun 2013. The memorandum came fully to light when it was finally produced in the V3/2 cases, *United States v. Clement* and *United States v. Richards*.

8. I was aware of the *United States v. Jiles* case during its pendency at MCB Quantico. One of the issues I tracked in the *Jiles* case was the sworn testimony of Gen Amos, which he provided in the form of sworn answers to court-ordered interrogatories. The focus of the interrogatories was apparent unlawful command influence (UCI) flowing from his remarks and actions during his Heritage Brief tour. I was well-aware of the Commandant's Heritage Brief tour, because he specifically referenced the V3/2 cases in addition to sexual assault cases. I, like many others, was concerned about what I believed to be obvious UCI, and its potential effect not only on the V3/2 cases, but also sexual assault and hazing courts-martial throughout the Marine Corps. During the *Jiles* case I discussed this matter with the trial counsel, Major Joseph I. Grimm, USMC. Col Gruter was concerned to the point that he advised LtGen Mills to not attend the Heritage Briefs as the remarks by Gen Amos could taint his independence as a CA. Similarly, Col Gruter was concerned that his ability to serve as SJA for the V3/2 cases could be called into question if he or I attended the Heritage Briefs. I did not attend the Heritage Briefs, nor did LtGen Mills or Col Gruter.

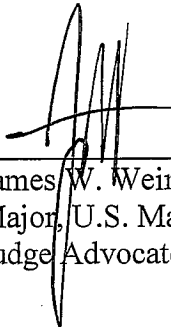
9. I read a copy of the Commandant's sworn answers to interrogatories a few days after they were submitted in the *Jiles* case. I observed that the Commandant stated, under oath, that, "[a]t no time did I directly or indirectly intend to dictate any course of action in any particular case or type of cases." He stated, "... I don't believe [my audience] misunderstood me or erroneously concluded that I was directing them to hold any particular point of view about these issues." He stated, "Not once do I remember speaking to the matter of Courts-Martial or BOIs from a perspective of criticism of due process, or in an attempt to shape the outcome of future proceedings." He stated, "... my decisions and actions are, and have always been, founded on and consistent with the law." At the time, I thought each of these statements was troubling in light of the Heritage Brief's actual content. I imagined that the issue would be fully litigated in the *Jiles* case, and, as a judge advocate and the DSJA for a CA that would have to evaluate a similar issue, I was curious as an interested onlooker to see how it would resolve. Additionally, this ruling would be considered when Col Gruter advised LtGen Mills on the disposition of the V3/2 cases.

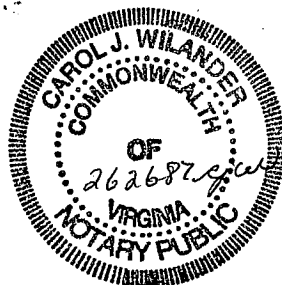
10. I first became personally aware of the Commandant's memorandum to LtGen Waldhauser of 10 February 2012 when I read it on or about 1 Jul 2013. I also read LtGen Waldhauser's sworn declaration shortly after it was made on 23 July 2013. These two documents, taken together, were very shocking. First, and most significantly to me in the V3/2 cases, it appeared that the Commandant's withdrawal of CDA authority from LtGen Waldhauser was improper and constituted actual unlawful command influence. And that Gen Amos realized that he had committed unlawful command influence. But second, his conversation with LtGen Waldhauser and his withdrawal of LtGen Waldhauser's CDA authority took place shortly before the Commandant would embark upon his Heritage Brief tour and make the statements he made, and approximately five months before the Commandant would swear, under oath, that he has

always acted in conformance with the law and that he essentially has never committed any unlawful command influence. Additionally, I was shocked that the memorandum was never provided to Col Gruter or LtGen Mills, despite my repeated request, on their behalf, to HQMC and JAD, including specific emails to MajGen Vaughn A. Ary, USMC; Col Joseph G. Bowe, USMC; Col Mark K. Jamison, USMC; Mr. Peter L. Delorier; and Mr. Robert D. Hogue. All of these individuals had actual or constructive knowledge of this memorandum and failed to produce it in discovery for scores of cases, including *United States v. Jiles*.

11. Had I been in possession of the 10 February 2012 memorandum from Gen Amos to LtGen Waldhauser, I would have immediately provided it to trial and defense counsel in the *Jiles* case once I was aware of the Commandant's sworn testimony. I believe it squarely fits the description of a prior inconsistent statement of Gen Amos, in light of his sworn answers to interrogatories. I believe that the military judge should have been able to consider its impact, and the arguments of both sides, before assessing the weight and credibility to be given to the Commandant's sworn testimony. Additionally, the military judge would need this memorandum to accurately determine if the actions by Gen Amos would cause an objective, disinterested observer, to question the fairness of the military justice system. I believe that the withholding of this memorandum by HQMC was obviously both morally and legally wrong, and a violation of JAGINST 5803.1D, Rule 3.4.a(1).

I, Major James W. Weirick, USMC, being first duly sworn, swear or affirm that the matters stated herein are true to the best of my information, knowledge, and belief.


SEP 20 2013
James W. Weirick
Major, U.S. Marine Corps
Judge Advocate



County/City of Stafford
Commonwealth/State of Virginia
The foregoing instrument was subscribed and
sworn before me this 20 day of September
2013, by
JAMES W. Weirick
(Name of person seeking acknowledgement)
Carol Jean Wilander
Notary Public
My commission expires: April 30, 2014
My Registration No: 262687

Enclosure 5

SWORN STATEMENT OF MAJOR JOSEPH GRIMM, USMC

1. Approximately when were you assigned as TC in the Jiles case?

I was assigned to the Jiles case in approximately June 2012.

2. After the Heritage Brief UCI issue was raised in the Jiles case, but before Gen Amos's 31 July 2012 answers to interrogatories, please describe all interactions or attempted interactions with the SJA, the CA, and/or members of HQMC (whether or not part of Judge Advocate Division) regarding (a) the Heritage Brief UCI issue in general, and (b) obtaining discovery relevant to the UCI issue. As to all communications, please identify the person or persons with whom you communicated and their billet.

I had several communications with Judge Advocate Division (JAD) during this time period. Immediately following an Article 39A session, wherein the Military Judge, Colonel Daugherty ordered the CMC to answer interrogatories, I was told by one of the Military Justice Clerks that someone from JAD was on the phone for me. I stepped into the clerk's office and Major General Ary, SJA to CMC, and several other members of his staff were on the phone inquiring about Colonel Daugherty's ruling. I believe that Col Mark Jamison (Community Development Branch, JAD), LtCol Derek Brostek (Military Justice Branch, JAD) Col Joseph Bowe, (DSJA, JAD) and General Ary were on the line for this conversation. I recall General Ary making the comment that his goal was to keep his client off of the witness stand or words to that effect.

Following the above referenced conversation with JAD, I was instructed by someone on General Ary's staff to ask Judge Daugherty several questions about his ruling. I believe Colonel Jamison instructed me to have Col Daugherty clarify certain aspects of his ruling. These clarification issues dealt with things that I wasn't concerned with as the prosecutor in the case, but rather matters that JAD was concerned with as the legal staff for the Commandant. As far as I saw it, Col Daugherty had ordered interrogatories and the Government would provide them to the CMC, and the CMC would answer them. During an 802 conference following Col Jamison's directive, I told Colonel Daugherty that JAD has questions about his ruling and asked whether he would clarify certain aspects of it. Col Daugherty said that he would clarify the ruling. During an Article 39A session on that date, Col Daugherty answered JAD's questions and stated words to the effect that he was surprised that JAD was involved in the matter since we were dealing with a UCI issue. Following this hearing, JAD requested a copy of the audio and the Military Justice section sent them a copy of it. After receiving the audio, Colonel Jamison called me on my office telephone and asked words to the effect of "what was I thinking by telling the Judge that JAD had questions for him." I responded that I had a duty of candor to the court, that I didn't have any questions for the Judge, and that since JAD had asked the questions, I thought it best to inform the Judge who was asking them. Col Jamison then told me that his communications with me were in the scope of his Trial Counsel Assistance Program Duties.

After the communication with Col Jamison, I had several conversations with Trial Counsel Assistance program (TCAP) personnel including Major Suzanne Thompson, LtCol Louis Schotemeyer, and Capt John Dunn. It was my understanding that TCAP was told to assist my trial team in dealing with the interrogatories. Col Daugherty had ordered both the government and defense to send proposed interrogatories to the court. After receiving the interrogatories, the court would then finalize which questions would be asked of the CMC. I

believe that I sent TCAP my proposed interrogatories as well those of the defense. TCAP recommended that I object to any and all interrogatories and recommended changes be made to my interrogatories before I submitted them. I followed TCAP's recommendations.

After Col Jamison questioned the efficacy of telling Col Daugherty about JAD's involvement and TCAPs assistance with the interrogatories, I kept JAD apprised of the status of the case via email and had limited conversations with them.

3. After Gen Amos's 31 July 2012 answers to interrogatories, please describe all interactions or attempted interactions with the SJA, the CA, and/or members of HQMC (whether or not part of Judge Advocate Division) regarding (a) the Heritage Brief UCI issue in general, and (b) obtaining discovery relevant to the UCI issue. As to all communications, please identify the person or persons with whom you communicated and their billet.

Answered above.

4. To the extent not detailed above, please describe any and all interactions you had with MajGen Vaughan A. Ary, USMC, related in any way to UCI issues or Article 120 cases generally, during and after the pendency of the Jiles case?

Answered above.

5. To the extent not detailed above, please describe any and all interactions you had with Col Mark K. Jamison, USMC, related in any way to UCI issues or to Article 120 cases generally, during and after the pendency of the Jiles case?

Answered above.

6. To the extent not detailed above, please describe any and all interactions you had with Col Joseph G. Bowe, USMC, related in any way to UCI issues or to Article 120 cases generally, during and after the pendency of the Jiles case?

Answered above.

7. To the extent not detailed above, please describe any and all interactions you had with anyone else at Judge Advocate Division (to include JAM), or anyone on the Commandant's civilian or military staffs, related in any way to UCI issues or to Article 120 cases generally, during and after the pendency of the Jiles case?

Answered above.

8. Were you directed to ask questions of the military judge in the Jiles case regarding the requirement to have Gen Amos testify? Who provided you with these questions? Please describe this interaction in detail.

Answered above.

9. At any time during the pendency of the Jiles case, were you ever made aware of the existence of the 10 February 2012 memorandum from Gen Amos to LtGen Waldhauser?

No.

10. When, and under what circumstances, did you first become personally aware of the existence of (a) the 10 February 2012 memorandum from Gen Amos to LtGen Waldhauser, and (b) the 23 July 2013 sworn declaration of LtGen Waldhauser?

I became aware of these documents in approximately July of 2013 during my representation of Captain James Clement.

11. Do you believe that the 10 February 2012 memorandum from Gen Amos to LtGen Waldhauser should have been produced to the defense in the Jiles case as discovery relevant to the Heritage Brief UCI issue, either before or after Gen Amos's 31 July 2012 answers to interrogatories? Why or why not? Please indicate in your answer whether you believe that memo to constitute Giglio material.

This is a question for a court to decide based upon a review of the evidence in the case.

12. As the trial counsel, during the pendency of the Jiles case, if you had been made aware of the existence of the 10 February 2012 memorandum from Gen Amos to LtGen Waldhauser, would you have produced it to the defense?

At a minimum, I would have provided it to Col Daugherty for an in camera inspection to determine its relevancy.

13. Do you believe that you were lied to or otherwise misled by anyone, whether senior or junior to you, regarding discoverable information on the UCI issue? The term "misled" also contemplates intentional or negligent omission of discoverable information by someone who knew or should have known of its existence.

The Waldhauser memo wasn't provided to the Jiles prosecution team. I cannot speculate as to the reasons for its nondisclosure and would be speculating as to whether anyone lied or misled me.

14. Other than Gen Amos and LtGen Waldhauser themselves, do you know who, at HQMC or elsewhere, was aware of (a) the 10 February 2012 memorandum from Gen Amos to LtGen Waldhauser, or (b) the underlying facts surrounding Gen Amos's withdrawal of CDA authority from LtGen Waldhauser?

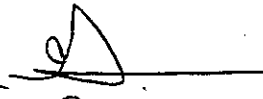
No.

15. At any time during or after the Jiles case, has anyone senior to you made any statement to you either (a) that you took as an attempt to intimidate you or affect your lawful behavior in any way, or (b) that a disinterested onlooker, aware of all the facts, might reasonably regard as an attempt to intimidate you or affect your lawful behavior in any way?

No.

16. Do you have any information you believe would be responsive or relevant to this inquiry, which you have not provided because of the existence of a privilege, such as the attorney-client privilege? If so, please identify the privilege you believe applies, as well as sufficient information to identify the general nature of the subject matter you believe to be privileged.

No.

Joseph 
Joseph Grimm 25 Sept 2013

County/City of PRINCE WILLIAM
Commonwealth/State of VIRGINIA

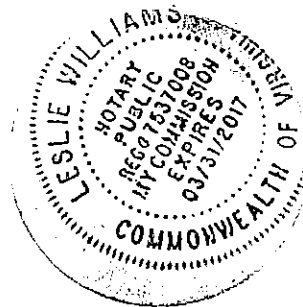
The foregoing instrument was subscribed and
sworn before me this 25th day of SEPT.

2013 by

JOSEPH T. GRIMM
(name of person seeking acknowledgement)

Leslie Williams
Notary Public

My commission expires: 03/31/2017



Enclosure 6

Marine commandant's lawyer: Whistleblower's email a red flag after Navy Yard massacre

By Hope Hodge Seck Staff writer
Oct. 1, 2013 - 06:00AM

marinecorpstimes.com



Robert Hogue, left, and Maj. James Weirick

A senior adviser for the Marine Corps commandant is defending last week's firing of a whistleblower who accused top brass of wrongdoing, saying a strongly worded email written by Maj. James Weirick triggered safety concerns after the Navy Yard shootings last month.

Weirick, a Marine attorney who filed a complaint to the Defense Department inspector general earlier this year alleging the commandant's office interfered with legal proceedings related to a war-zone scandal, was removed from his job in late

September, and told to seek a mental-health evaluation and surrender his personal firearms.

Some in the Marine Corps legal community see the move as retaliation and an abuse of the legal safeguards afforded to whistleblowers. But Robert Hogue, the top civilian attorney for Marine Corps Commandant Gen. Jim Amos, called Weirick's missive a red flag in light of the Sept. 16 massacre inside the Washington, D.C., headquarters for Naval Sea Systems Command. The mass shooting left 13 dead, including the gunman.

"Like all members of the Navy-Marine Corps team, I am deeply moved and motivated by the recent tragedy at the Washington Navy Yard," Hogue told Marine Corps Times in a brief written statement issued through a Marine public affairs officer at the Pentagon. "Against the backdrop of that tragedy, I am very concerned for the safety of my clients and staff given the bizarre nature of the communications in this case."

Weirick's email was sent Sept. 21 to Peter Delorier, Hogue's former deputy, who also is named in Weirick's inspector general complaint. In it, Weirick pleads with Delorier to "come clean" about his role in the alleged miscarriage of justice by Amos's office. Weirick referred to himself in the third person throughout, and at one point told Delorier that while his superiors might have promised to shelter him from professional repercussions, no one can "offer you protection from Weirick."

According to Weirick's attorney, Jane Siegel, Weirick's access card and computer files were seized, and he's been barred from returning to his office. He also was questioned by the Naval Criminal Investigative Service, she said.

Ed Buice, a spokesman for NCIS, said he couldn't immediately confirm that Weirick had been questioned by the organization, but said he was looking into the matter.

The Navy Yard tragedy provided Weirick's command with a convenient excuse to take drastic action against him, said Siegel, a retired Marine Corps colonel.

"I don't believe in coincidences, and I think that's what's going on," she said Tuesday. "It gives them a separate excuse for the public as to why they're treating him this way."

Others in the Marine Corps legal community say the action taken against Weirick seems more like reprisal than threat mitigation. Lt. Col. Robert "Butch" Bracknell, a Marine Corps attorney working in Alexandria, Va., said Weirick's use of the third person in his email to Delorier was nothing more than an idiosyncrasy.

"I've known Weirick for about 15 years and he has *always* referred to himself in the third person. It's his schtick," Bracknell said. "It doesn't mean he's nuts. It just means he's Weirick — eclectic, funny, awesome."

Attorney Guy Womack pointed to the upcoming administrative hearing for Capt. James Clement, who was charged with dereliction of duty and conduct unbecoming an officer in connection with the now infamous YouTube video showing four Marine scout snipers urinating on the remains of dead insurgents in Afghanistan. Citing Weirick's IG complaint and a host of internal documents, Clement's defense attorneys fought to dismiss the charges against him, accusing the commandant and his advisers of conspiring to ensure severe punishment for those Marines connected video.

The charges against Clement were dismissed, but he still faces the end of his military career pending the outcome of his hearing, which is scheduled for Oct. 15. And once again, Weirick's complaint is expected to take center stage.

"Obviously the timing couldn't be more suspect," said Womack, a retired Marine officer who represented one of the snipers prosecuted in the urination scandal. "... Certainly, describing oneself in the third person is unusual, although President Obama has done that on occasion. [But] I don't really see anything that's threatening."

A former Marine Corps prosecutor who's watched these cases closely said that while he does not condone Weirick's decision to email Delorier, the extreme actions that followed look like "railroading."

"The major's hectoring email, referring to himself in the third person, does little to counter a negative impression," said Gary Solis, an expert on the laws of war and professor at Georgetown University. "But instant relief? Psych appointments? Turn in your weapons? Presuming no previous warning to cease, those are excessive actions."

In May, Weirick filed an additional complaint with the Defense Department inspector general alleging members of Amos' legal staff targeted his supervisor at the time, Col. Jesse Gruter, for refusing to stop the major from addressing his concerns with members of Congress. Later, Weirick said, Hogue and others in the commandant's office pressured his command to make him stop contacting lawmakers.

A military protective order issued to Weirick last week says that while he is to have no further contact with Amos, Hogue, Delorier and others named in his IG complaint, he is not prohibited from contacting members of Congress or the IG's office. Siegel said she has forwarded that document, comparable to a civilian restraining order, to the IG for Weirick's file.

An spokeswoman for the IG's office, Bridget Serchak, said she cannot provide information on the status of Weirick's now six-month-old complaint. She also said she is unable to address anything related to alleged reprisal.



Battle Rattle blog



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