

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.

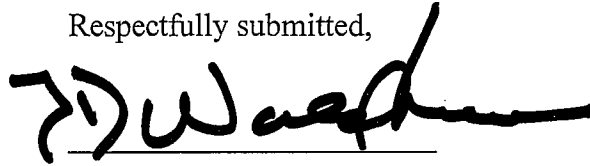
17. I did attend the Executive Off-Site ("EOS") in May of 2012. I understand that at this EOS there was a discussion of the urination incident but I did not attend this discussion nor at any other time did I discuss the matter or my conversation with the CMC with anybody at the EOS. I did not participate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

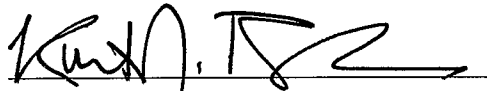


T. D. WALDHAUSER
Lieutenant General
United States Marine Corps

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