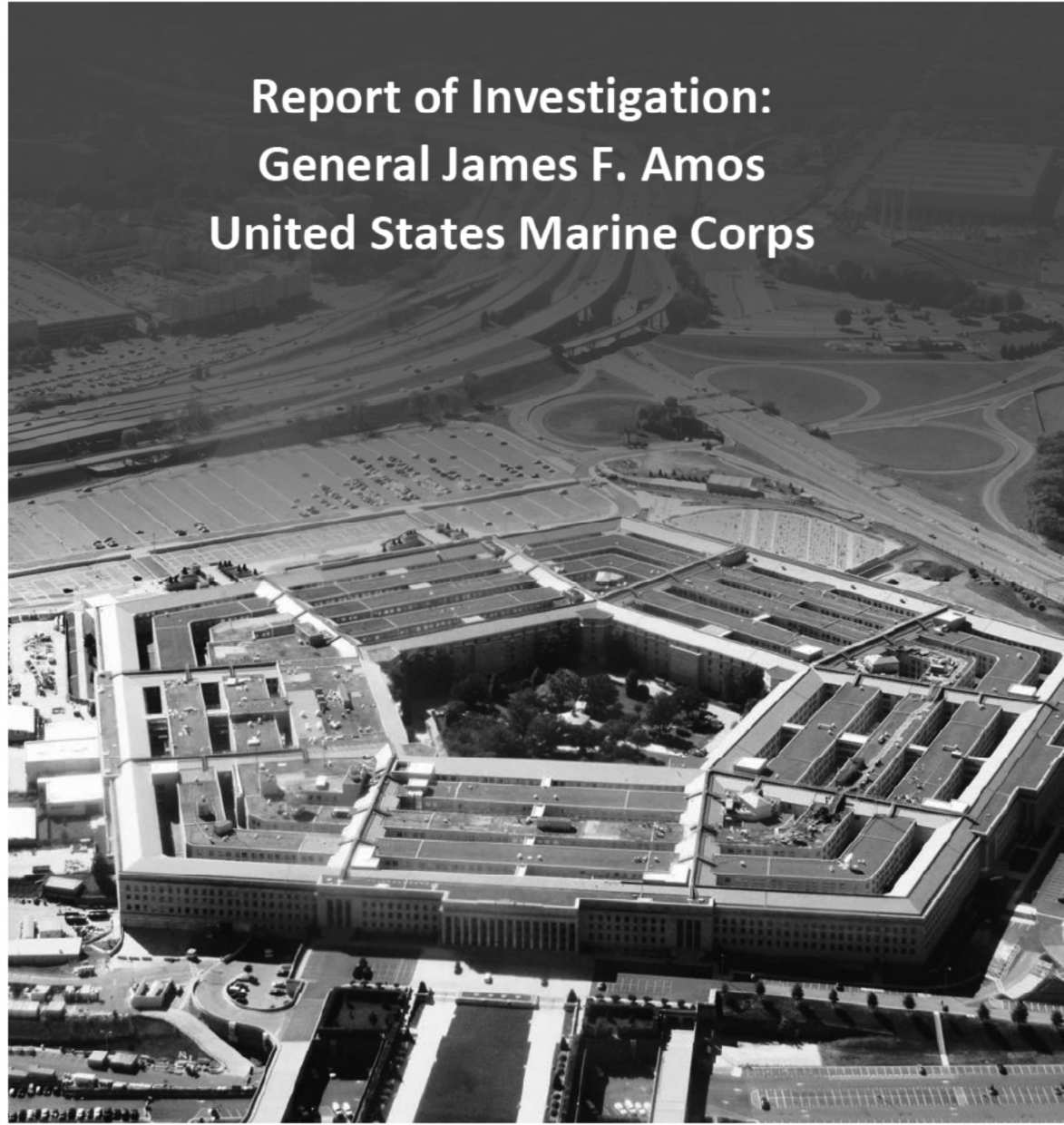


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# INSPECTOR GENERAL

*U.S. Department of Defense*

July 23, 2014



## Report of Investigation: General James F. Amos United States Marine Corps

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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**INSPECTOR GENERAL**  
DEPARTMENT OF DEFENSE  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500

JUL 23 2014

MEMORANDUM FOR INSPECTOR GENERAL

SUBJECT: Report of Investigation – General James F. Amos, United States Marine Corps  
(Case No. 20131206-017598)

We recently completed an investigation to address an allegation that General (Gen) James F. Amos, while serving as Commandant, United States Marine Corps, attempted to influence a consolidated disposition authority (CDA) appointed to exercise jurisdiction over Marines alleged to have urinated on corpses of enemy combatants in Afghanistan.

We did not substantiate the allegation. We conclude Gen Amos did not attempt to influence the judicial acts of the CDA.

We found that Gen Amos designated Lieutenant General (LtGen) Thomas Waldhauser, Commander, U.S. Marine Forces, Central, and Commander, 1st Marine Expeditionary Force, as CDA and authorized him to investigate and take appropriate administrative and disciplinary actions concerning the urination incident. On February 6-7, 2012, Gen Amos and LtGen Waldhauser met in a Middle East country.

On the evening of February 6, 2012, Gen Amos and LtGen Waldhauser attended an informal dinner with other Marines where the urination incident was raised. LtGen Waldhauser testified that at some point, Gen Amos leaned back in his chair and quietly told him, "Those guys need to be crushed." Gen Amos testified he did not recall making that statement.

On February 7, 2012, LtGen Waldhauser met with Gen Amos at the airport before they departed the country and discussed possible proceedings against the Marines involved. Gen Amos testified he was "incredulous" about LtGen Waldhauser's proposed pace and thought he was moving too fast. At the time, the allegations were still being investigated and no charges had been preferred. Gen Amos stated his questions "were probably the wrong thing to have said," and thought he "may have overstepped [his] bounds" during their conversation. LtGen Waldhauser testified that while the conversation remained professional, he thought it had "crossed a line." After their conversation, both Gen Amos and LtGen Waldhauser flew out of the country.

During his flight, Gen Amos realized he may have given LtGen Waldhauser the wrong impression during their conversation. After landing in Germany, Gen Amos called his Staff Judge Advocate and the Assistant Commandant of the Marine Corps (ACMC), and directed the removal of LtGen Waldhauser as the CDA. The same day, ACMC called LtGen Waldhauser and conveyed Gen Amos' decision to him. On February 10, 2012, Gen Amos appointed a new CDA.

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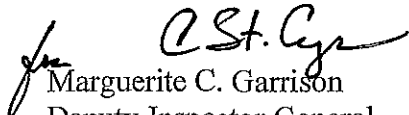
Article 37, UCMJ, states that no person may attempt to coerce or influence the action of any convening, approving, or reviewing authority with respect to his judicial acts. To hold a person culpable, Article 80, UCMJ, states that attempt offenses require specific intent.

We determined Gen Amos did not have the specific intent to influence LtGen Waldhauser. We also determined that while Gen Amos expressed concern about and questioned the pace of LtGen Waldhauser's proposed decisions at the airport meeting, he did not direct LtGen Waldhauser to implement specific dispositions. At the time of their meeting, the investigations were not complete and no charges had been preferred against any of the Marines.

We could not determine whether Gen Amos told LtGen Waldhauser that he (Gen Amos) wanted the Marines "crushed." LtGen Waldhauser testified that Gen Amos made the comment and Gen Amos testified he could not recall making the comment. We determined that the testimony was inconclusive. Even if we determined Gen Amos made the "crushed" comment, that single comment would not alter our report's conclusion that Gen Amos did not attempt to influence the CDA's judicial acts in violation of Article 37, UCMJ. The detailed discussion at the airport meeting and Gen Amos' subsequent actions provided the best evidence of Gen Amos' intent.

We further determined that Gen Amos' prompt remedial action in removing LtGen Waldhauser demonstrated a lack of specific intent to influence the CDA and fixed any unintended interference with the disciplinary process. Additionally, Gen Amos' appointment of a new CDA with whom he did not discuss the incident demonstrated Gen Amos' intent to ensure that the disciplinary process was untainted by inappropriate influence. Accordingly, we conclude Gen Amos did not attempt to influence the judicial acts of the CDA in violation of Article 37, UCMJ.

We make no recommendation in this matter.

  
Marguerite C. Garrison  
Deputy Inspector General  
Administrative Investigations

**REPORT OF INVESTIGATION:  
GENERAL JAMES F. AMOS**

**I. INTRODUCTION AND SUMMARY**

We initiated this investigation to address an allegation that General (Gen) James F. Amos, U.S. Marine Corps (USMC), Commandant, attempted to influence the action of a consolidated disposition authority (CDA).<sup>1</sup>

We did not substantiate the allegation. We conclude Gen Amos did not attempt to influence the action of a CDA in violation of Article 37, Uniform Code of Military Justice (UCMJ).

We found that a January 2012, YouTube video of Marines urinating on the bodies of deceased enemy combatants sparked national and international outrage, intense media and political interest in the USMC's response to the incident, and the initiation of investigations by the USMC and the Naval Criminal Investigative Service (NCIS).

We found that Lieutenant General (LtGen) Thomas Waldhauser, USMC, Commander, U.S. Marine Forces, Central (MARCENT), and Commander, 1st Marine Expeditionary Force, assumed CDA duties immediately following the publication of the video. On January 13, 2012, Gen Amos formally designated him as CDA and authorized him to investigate and take appropriate administrative or disciplinary actions concerning the urination incident.

We found that by January 31, 2012, LtGen Waldhauser believed he had sufficient information to initiate disciplinary action against the four Marines in the video and a fifth Marine who filmed the incident. LtGen Waldhauser emailed and sought guidance from Gen Amos concerning the "pace" of proceedings against the five Marines. On February 6-7, 2012, Gen Amos and LtGen Waldhauser met in the United Arab Emirates (UAE).

On the evening of February 6, 2012, Gen Amos and LtGen Waldhauser attended a large, informal dinner with other Marines where the urination incident was raised. LtGen Waldhauser testified that at some point during the dinner, Gen Amos leaned back in his chair and quietly told him, "Those guys need to be crushed." LtGen Waldhauser added he did not reply, no one else heard the comment, and Gen Amos said nothing else to him about the urination incident that evening. Gen Amos testified he did not recall making that statement.

The next morning, LtGen Waldhauser met with Gen Amos before each departed the country. Prior to their departure, Gen Amos and LtGen Waldhauser spoke privately about the urination incident for about 30 minutes at a private jet terminal. During their conversation, LtGen Waldhauser presented his general disposition plan for the five accused Marines and informed Gen Amos that he did not intend to send any of the Marines to a general court-martial.

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<sup>1</sup> The incoming complaint raised other allegations and concerns related to the military justice process. Based on our initial fieldwork we determined those allegations did not merit further investigation. We discuss these allegations generally in Section III of this report.

We found that Gen Amos and LtGen Waldhauser discussed the pace of possible proceedings against the Marines involved. At the time, the allegations were still being investigated and no charges had been preferred. Gen Amos testified he was “incredulous” about LtGen Waldhauser’s proposed pace and thought he was moving too fast. Gen Amos stated his questions “were probably the wrong thing to have said,” and thought he “may have overstepped [his] bounds” during their conversation. LtGen Waldhauser testified that while the conversation remained professional, he thought it had “crossed a line.” After their conversation, both Gen Amos and LtGen Waldhauser flew out of the country.

During his flight, Gen Amos realized he may have given LtGen Waldhauser the wrong impression during their conversation and concluded he needed to fix any inadvertent interference with the disciplinary process by removing and replacing the CDA. After landing in Germany, Gen Amos called the Assistant Commandant of the Marine Corps (ACMC) and his Staff Judge Advocate, and directed LtGen Waldhauser’s removal as the CDA. The same day, ACMC called LtGen Waldhauser and conveyed Gen Amos’ decision to him.

We found that on February 10, 2012, Gen Amos appointed a new CDA. We found no evidence the replacement CDA knew of Gen Amos’ exchange with LtGen Waldhauser or was influenced by Gen Amos or LtGen Waldhauser, or that Gen Amos attempted to influence the CDA in any way.<sup>2</sup> We further found that the final disposition of the urination incident cases was consistent with the general plan LtGen Waldhauser briefed to Gen Amos in February 2012.

Article 37, UCMJ, states that no person may attempt to coerce or influence the action of any convening, approving, or reviewing authority with respect to his judicial acts. To hold a person culpable, Article 80, UCMJ, states that attempt offenses require specific intent.

Based on our analysis of the evidence, we determined Gen Amos expressed his disappointment with LtGen Waldhauser’s proposed rapid pace of proceedings at the airport. We determined Gen Amos did not have the specific intent to influence LtGen Waldhauser. Gen Amos did not direct LtGen Waldhauser to take any particular course of action concerning the Marines. Further, his prompt action to confer with his Staff Judge Advocate and ACMC and replace LtGen Waldhauser as CDA demonstrated Gen Amos’ intent to ensure that the disciplinary process remained untainted.

Based on our analysis of the evidence, we could not determine whether Gen Amos told LtGen Waldhauser that he (Gen Amos) wanted the Marines “crushed.” LtGen Waldhauser testified that Gen Amos made the comment and Gen Amos testified he could not recall making the comment. We determined that the evidence was inconclusive. Even if we determined Gen Amos made the “crushed” comment, that single comment would not alter our report's conclusion that Gen Amos did not attempt to influence the CDA's judicial acts in violation of Article 37, UCMJ. The detailed discussion at the airport meeting and Gen Amos’ subsequent actions provided the best evidence of Gen Amos’ intent.

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<sup>2</sup> Lieutenant General (LtGen) Waldhauser’s successor as CDA was replaced by another general officer upon his change of command and assignment to a new duty position.

Our investigation examined whether Gen Amos attempted to influence Lt Gen Waldhauser in violation of Article 37, UCMJ. We did not assess or evaluate whether any Marine involved in the urination incident or in any other matter is entitled to relief based on the matters described in this report.

We make no recommendation.

The report sets forth our findings and conclusions based on the preponderance of the evidence.

## **II. BACKGROUND**

On October 22, 2010, Gen Amos assumed the duties of the Commandant, USMC (CMC). The CMC is responsible for maintaining a high degree of competence among USMC officers and enlisted personnel, the morale and motivation of USMC personnel, and the prestige of a career in the USMC.

On January 11, 2012, a video appeared on YouTube showing Marines urinating on the bodies of several enemy combatants killed during combat operations in Afghanistan. The video garnered worldwide attention, including significant media and political interest. LtGen Thomas Waldhauser, USMC, Commanding General, Marine Corps Forces Central Command, assumed jurisdiction over potential disciplinary matters, and the Naval Criminal Investigative Service (NCIS) initiated a criminal investigation into alleged violations of the Law of Armed Conflict.

On January 13, 2012, Gen Amos formally appointed LtGen Waldhauser to serve as the CDA for the urination incident, and LtGen Waldhauser appointed LtGen Steven A. Hummer, USMC, Commander, U.S. Marine Forces Reserve, to investigate the urination incident. The appointment of a CDA is a mechanism to place all necessary administrative and disciplinary action authority under a single military officer. The CDA serves as a court-martial convening authority. We refer to LtGen Hummer's investigation as the "Hummer investigation" in this report.

The Rules for Courts-Martial (R.C.M.), Manual for Courts-Martial, United States (2012), govern procedures and rules for all courts-martial. A court-martial is convened by the order of a court-martial convening authority. A "convening authority" includes a commissioned officer in command for the time being and successors in command. R.C.M. 104, "Unlawful command influence," along with Article 37, UCMJ, prohibits all persons subject to the UCMJ from attempting to influence the action of any convening authority with respect to such authority's judicial acts. R.C.M. 105(a), "Convening authorities and staff judge advocates," requires convening authorities to communicate at all times "directly with their staff judge advocates in matters relating to the administration of military justice." R.C.M. 306, "Initial disposition," states that a commander has discretion to dispose of offenses by members of the command, and prohibits superior commanders from limiting the discretion of subordinate commanders to act on cases over which authority has not been withheld. R.C.M. 306(b), "Policy," provides that allegations of offenses should be disposed of at the lowest appropriate level. The rule contemplates a goal for disposition of offenses that is "warranted, appropriate, and fair."

### **III. SCOPE**

We interviewed Gen Amos and 13 witnesses. We reviewed information and documents provided by the attorney for the complainant, witnesses, a U.S. Congressman, and Gen Amos.

The complaint alleged additional misconduct by Gen Amos' Staff Judge Advocate (SJA), the Counsel for the Commandant, and the CDA appointed to replace LtGen Waldhauser, including false swearing and obstruction of justice. We found no credible evidence to support any of these additional allegations and determined they did not warrant further investigation.

The complaint also alleged Gen Amos improperly directed the classification of an investigation by LtGen Steven Hummer (the Hummer investigation) into the urination incident. During the course of our investigation, we found that operational commanders in Afghanistan requested classification of evidence relating to the urination incident to address force protection concerns in theater. Accordingly, we determined that this allegation did not warrant further investigation.<sup>3</sup>

As we noted above, we did not assess or evaluate whether any Marine involved in the urination incident or in any other matter is entitled to relief based on the matters described in this report.

### **IV. FINDINGS AND ANALYSIS**

#### **Did Gen Amos attempt to influence a court-martial convening authority?**

##### **Standards**

#### **Article 37, UCMJ, "Unlawfully Influencing Action of the Court"**

Article 37, UCMJ, provides that no person may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

#### **Article 80, UCMJ, "Attempts"**

Article 80, UCMJ, states that an act done with specific intent to commit an offense, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

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<sup>3</sup> The classification matter was also evaluated by the Information Security Oversight Office, which on May 30, 2014, issued a letter indicating it found no violation of applicable standards by General (Gen) Amos or anyone else.

Facts*Political and Media Reaction to the Urination Incident*

On January 11, 2012, a video appeared on YouTube of Marines urinating on the bodies of several enemy combatants killed during combat operations in Afghanistan. The video garnered worldwide attention, including significant media and political interest. The White House and the Secretary of Defense (SECDEF) were interested in how the USMC addressed the underlying misconduct. The concerns of civilian leadership at the White House included a desire for a quick resolution to the matter. The following are representative public statements made by several leaders condemning the actions of the Marines involved in the urination incident.

On January 12, 2012, the SECDEF issued a statement that he had seen the video and found the behavior depicted in it “utterly deplorable.” His statement added:

I condemn it in the strongest possible terms. I have ordered the Marine Corps and the ISAF [International Security Assistance Force] Commander General John Allen to immediately and fully investigate the incident. This conduct is entirely inappropriate for members of the United States military and does not reflect the standards or values our armed forces are sworn to uphold. Those found to have engaged in such conduct will be held accountable to the fullest extent.

Mr. James “Jay” Carney, the White House Press Secretary, stated that the President of the United States was aware of the video. Mr. Carney stated that the acts apparently depicted on the video were “deplorable, reprehensible, and unacceptable,” and added that the President agreed with the SECDEF’s statement.

The Secretary of the Navy (SECNAV) released the following statement:

The conduct depicted in the video is appalling and outrageously offensive. We hold the U.S. Marine Corps to the highest possible standards, and the behavior shown in the video failed to uphold those standards in every possible way. Anyone who is found responsible for these actions will be held appropriately and fully accountable.

General Martin E. Dempsey, U.S. Army, Chairman of the Joint Chiefs of Staff, also made a statement describing the Marines’ actions as deeply disturbing and adding, “[a]ctions like these are not only illegal but ... serve to erode the reputation of our joint force.” General Dempsey expressed his confidence that “there will be accountability, as appropriate.”



The office of Hamid Karzai, President of Afghanistan, issued a statement condemning the urination incident:

This act by American soldiers is simply inhuman and condemnable in the strongest possible terms. We expressly ask the [U.S.] government to urgently investigate the video and apply the most severe punishment to anyone found guilty in this crime.

Emails from Gen Amos and SECDEF's special military assistant (SMA) document that the White House and SECDEF expected regular status investigation updates from the USMC. Gen Amos was responsible for providing the updates.

*Gen Amos' Reaction to the Urination Incident*

Gen Amos testified that he viewed the video shortly after it appeared on YouTube. Gen Amos testified it was difficult to imagine that Marines would do such a thing because Marines are "pretty ethical warriors on the battlefield." He described his initial reactions:

I was embarrassed. But more than anything I think I was just ashamed that this is the institution that I'm responsible for, the head of, and I've got Marines out there in the public. So that's the first thing is ashamed.

Gen Amos believed he had to make a public statement. On January 12, 2012, approximately 1 hour after SECDEF released his statement, Gen Amos issued the following statement:

I want to be clear and unambiguous, the behavior depicted in the video is wholly inconsistent with the high standards of conduct and warrior ethos we have demonstrated throughout our history. Accordingly, late yesterday I requested that the Naval Criminal Investigative Service pull together a team of their very best agents and immediately assign them responsibility to thoroughly investigate every aspect of the filmed event. Additionally, I am assigning a Marine General Officer and a senior attorney, both with extensive combat experience, to head up an internal – Preliminary Inquiry – into the matter. Once the investigation and preliminary inquiry are complete and the facts have been determined, then the Marine Corps will take appropriate next steps. Rest assured that the institution of the Marine Corps will not rest until the allegations and the events surrounding them have been resolved. We remain fully committed to upholding the Geneva Convention, the Laws of War, and our core values.

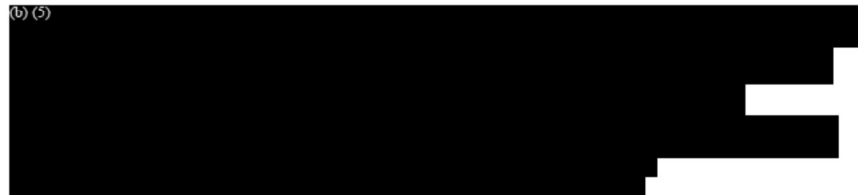
*LtGen Hummer and NCIS Investigations*

On January 24, 2012, LtGen Waldhauser's SJA forwarded a one-page information paper to LtGen Waldhauser providing an executive summary of the Hummer and NCIS investigations.

(b) (5)



(b) (5)



On February 2, 2012, LtGen Hummer provided the following investigation update to LtGen Waldhauser:

(b) (5)



On February 5, 2012, Major General (MajGen) Vaughn A. Ary, USMC, SJA to the Commandant, provided the following email update to several USMC senior leaders, including both Gen Amos and LtGen Waldhauser, concerning the NCIS investigation:

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<sup>4</sup> LtGen Waldhauser's SJA testified that there were comprehensive disposition discussions during late January and early February 2012, and added that he was "very impressed" with LtGen Waldhauser. As to the cadence of the process, LtGen Waldhauser's SJA testified that he believed LtGen Waldhauser was "dead on in terms of pace."

<sup>5</sup> LtGen Hummer completed his investigation on March 9, 2012.

We will receive additional NCIS interim reports, but according to NCIS, they will not close the final investigation for several months due to computer forensic issues.... [LtGen Waldhauser] anticipates [he] should have enough information to take any necessary disciplinary or administrative action based on the NCIS interim reports and LtGen Hummer's command investigation when these investigations are substantially complete – and may not have to wait for the final version.

### *Unlawful Command Influence (UCI) Concerns*

Given the widespread public interest and the various public comments regarding the urination incident, USMC leaders were conscious of the potential for UCI issues to arise in the military justice process related to the urination incident. An appreciation of the possible consequences of UCI helped shape the decisions and actions of USMC senior leaders.

Gen Amos was aware that his responsibility to set the tone and tenor of the Corps could conflict with an important tenet of the military justice system. He explained his appreciation of this tension in a court-ordered interrogatory in an unrelated court-martial proceeding:

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.

Mr. Robert Hogue, Counsel for the Commandant, testified that Gen Amos had an obligation to discuss the urination incident. Mr. Hogue stated:

[A]s the Commandant you can't avoid the fact that things are happening on the front page in the real world for which you are accountable. Don't forget February is testimony season in this building [the Pentagon], so the Commandant is going to wind up on the Hill in February and March of that year and every year testifying before the Senate Armed Services Committee and the House Armed Services Committee. So he's going to have to be prepared to talk in general terms about what's happening in the public eye.

Gen Amos also recognized the potential for UCI when senior civilian leaders are involved in the court-martial process. On January 29, 2012, Gen Amos stated to LtGen Waldhauser and LtGen Hummer in an email that the SECDEF's SMA is "doing

intervention with the SECDEF and White House on our behalf ... trying his best to 'feed the beast' without interfering with the natural progression of the legal system." Gen Amos later wrote to LtGen Waldhauser that "[t]he folks in the WH [White House] will have to be very judicious with the info so as to not allow it to get out in the public forum or we will have legal issues as you [LtGen Waldhauser] know."

SECDEF's SMA was also aware of the dangers of UCI. He explained his concerns to LtGen Waldhauser and Gen Amos in an email:

As a general rule the civilian leadership, particularly in the WH [White House], can't understand why it takes, in their opinion, so long to do investigations. They also fail [to] understand what command influence is so I have found that if I can feed the beast a bit they are satisfied they are being kept informed.<sup>6</sup>

*LtGen Waldhauser's Actions as CDA*

On January 31, 2012, after meeting with NCIS agents and his SJA, LtGen Waldhauser emailed a report of his progress as CDA to Gen Amos. The subject of the email was "Legal Update on YouTube video case." LtGen Waldhauser characterized the email as routine and unremarkable correspondence.

LtGen Waldhauser's email provided the following report of his progress:

As of today, NCIS provided a clear picture of the role played by the four Marines who urinated, the video camera man and Marines in the vicinity. In addition to the 4 + 1, a few Marines could be held responsible for minor infractions like failure to report the use of a camera or posing for a trophy photo with a corpse. After NCIS departed, I had a long discussion with my legal team and MARCENT Chief of Staff regarding the way [a]head.... I am homing in on a comprehensive plan that I think gives the correct and relative punishment for each Marine.

LtGen Waldhauser added that he believed the senior Marines were more responsible and should face a more severe forum than their juniors should. He did not think that any of the cases rose "to the level of a General Court-Martial."<sup>7</sup> LtGen Waldhauser also provided Gen Amos with a timeline. He stated he intended to announce his case disposition plan soon after he received both the Hummer and NCIS investigations by the end of February 2012. He wrote in the email:

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<sup>6</sup> In an email dated January 13, 2012, LtGen Waldhauser wrote that while he recognized the interest by and leadership from the "CMC, the Chairman, and Secretaries," he was "unaffected by any public statements by senior defense officials and [he would] exercise completely independent judgment on disposition of these cases."

<sup>7</sup> There are three forms of courts-martial: summary, special, and general courts-martial (GCM). A GCM is roughly equivalent to a felony prosecution and affords enhanced due process to an accused.

Since I don't expect NCIS to uncover much, if any, new information in the next few weeks, I could feasibly announce my decisions and start to dispose of these cases sooner, even within the next few weeks.

LtGen Waldhauser's email also highlighted that his legal staff had "started discussions with defense counsel for the suspected Marines." LtGen Waldhauser closed the email with a request for USMC Public Affairs Office support in anticipation of the announcement of case disposition decisions.

According to LtGen Waldhauser, he was at a decision point in the execution of his CDA duties on January 31, 2012. He testified he had reached "a crossroads" in the matter because he believed there was enough information to make an informed decision on five Marines involved in the urination incident, the four in the video and the fifth Marine who filmed the event. He believed a special or summary court-martial was appropriate for the two senior Marines and non-judicial punishment or summary courts-martial were appropriate for the remaining three Marines.<sup>8</sup>

On January 31, 2012, LtGen Waldhauser was mulling over the pace of moving forward. He testified:

We [were] at a fork in the road ... and this ties to this issue of pace or way ahead ... we had enough at that point in time to probably deal with those [five individuals].... So we could have dealt with those. That was one option, and then if something else came up later on, we would ... do what was appropriate ... or we could wait for all of this to go through, let the whole thing, you know, work its way through, which would have taken a long time, you know, to go through all that, and then, you know, make ... final disposition decisions then. So that was kind of where we were. That was kind of a fork in the road.

Gen Amos testified he was "a bit surprised" by LtGen Waldhauser's January 31, 2012, email. He stated he did not recall replying to the email or providing any initial feedback. He testified he recalled thinking to himself:

Tom [LtGen Waldhauser], why are you talking about a range of, or limiting your range of actions going to be taken on 31 January? You appointed Steve Hummer, a three-star general, combat commander, infantry officer just like you [to complete the investigation].... And it was clear that it was going to take longer.

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<sup>8</sup> The severity of available punishments escalates with the level of disciplinary proceeding. An enlisted service member can be punitively discharged only by a special or general court-martial, while an officer can only be dismissed by a general court-martial.

So on 31 January what I was surprised at was the range of disciplinary actions that could be taken on a pretty significantly, high-profile incident ranged from summary court-martial, excuse me, from NJP [non-judicial punishment] up to probably summary court-martial, somewhere around there. And so anything to the right of that had been eliminated by 31 January, absent the facts.... So I was surprised at that. I wasn't angry, but I was surprised at that and I'm thinking, well, why is that?

Gen Amos further testified that he was "incredulous" when he read the portion of the email stating that LtGen Waldhauser was considering disposing of cases within 2 weeks.<sup>9</sup>

LtGen Waldhauser and Gen Amos arranged to discuss the matter in person at some point during their respective stays in the UAE between February 6-7, 2012. Both had been previously scheduled to participate in meetings with senior officials there. Prior to the meeting, LtGen Waldhauser sent an email to several senior USMC officers, including Gen Amos, providing a summary of his intent for the upcoming discussion with Gen Amos. LtGen Waldhauser wrote:

[B]ased on meetings I had this week with NCIS, Trial Counsel, and my [lawyers], we are moving forward appropriately. I will discuss "pace" and several other issues with CMC in the UAE on Monday and Tuesday.

LtGen Waldhauser testified that there were two purposes for the meeting on the urination incident: a face-to-face update and a discussion of the pace of how "we were going to proceed." LtGen Waldhauser stated he had hoped for some insight from Gen Amos on the pace issue.

Gen Amos testified that his concern for accountability was at the forefront of his thoughts on the urination incident prior to meeting with LtGen Waldhauser in the UAE. Gen Amos explained:

Even within our own Department of Defense, the OSD General Counsel, Jeh Johnson ... was doing a deep dive into the military justice system because the accusations, both external and in, [were] that the U.S. military has a hard time holding people accountable. They have a hard time holding their peers accountable. They have a hard time holding senior officers accountable.

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<sup>9</sup> LtGen Waldhauser appointed the investigating officer, LtGen Hummer, on January 13, 2012, 17 days prior to the January 31, 2012, email. LtGen Hummer completed his investigation on March 9, 2012. When he received the Hummer investigation, the replacement CDA at the time, LtGen Richard P. Mills, USMC, appointed a follow-on investigation on May 15, 2012, to review unresolved issues. The investigating officer completed the second investigation on June 15, 2012.

*February 6 – 7, 2012*

### The Overseas Trip

The UAE visit was scheduled for the last 2 days of a February 2-8, 2012, trip originating at Andrews Air Force Base (AAFB). Gen Amos and nine others, including three USMC general officers, departed AAFB on February 2, 2012. The mission itinerary included stops in Italy, Afghanistan, the UAE, and Germany. Gen Amos' party arrived in Afghanistan on February 4, 2012, and departed for the UAE on February 6, 2012, arriving at approximately 3:45 p.m., local time.

LtGen Waldhauser joined the official party during the 2-day stay in the UAE. Gen Amos' itinerary for February 6, 2012, included a visit to the U.S. Embassy, a meeting with a senior UAE Presidential Guard official, and a meeting with another senior UAE official. The itinerary for February 7, 2012, included meetings with Marines stationed in the country and UAE armed forces officials. The official party stayed at [REDACTED]. Lt Gen Waldhauser was scheduled to join Gen Amos at about 7:00 p.m., on February 6, and again on February 7, 2012, between 9:30 a.m. and 10:30 a.m., [REDACTED] where Gen Amos met with Marines stationed in the UAE. According to Gen Amos' itinerary, Gen Amos and LtGen Waldhauser remained together from when they first met on the morning of February 7, 2012, until their respective departures from the UAE at about 1:00 p.m. The itinerary included no specific schedule for a private discussion between LtGen Waldhauser and Gen Amos about the urination incident.

### Dinner

We interviewed several officials who accompanied Gen Amos and LtGen Waldhauser on February 6, 2012. According to the witnesses, [REDACTED] who resides in the UAE organized an unofficial dinner for the official party on the evening of February 6, 2012, in the [REDACTED]. Gen Amos and LtGen Waldhauser were not expected to join the others at dinner due to a meeting they had scheduled with a senior UAE official from 7:00 p.m. to 10:00 p.m. The senior UAE official cancelled the meeting. This afforded Gen Amos and LtGen Waldhauser the opportunity to attend the dinner, and they joined their colleagues shortly after their fellow Marines had been seated in the restaurant.

Witnesses described the dinner event as occurring at the end of the day, approximately 7:00 p.m. The dinner was in a restaurant located within [REDACTED]. The dinner party all sat at one, crowded rectangular table. The table was not in a private area of the restaurant, and the restaurant itself was loud and busy. Other patrons at the restaurant included a considerable number of individuals from the local population. The dinner event lasted approximately 3 hours and included cocktails and other alcoholic beverages. The attendees were weary from their overseas travel. The size of the table, number of individuals at the table, and general atmosphere in the restaurant resulted in several conversations going on at the table simultaneously with those nearby, rather than one conversation with everyone participating.

(b) (7)(F) described the seating arrangement as follows:

On the long sides [at] the center was Gen Amos, and I was directly opposite him. So we were at the center of the long sides ... now you're the Commandant, to the Commandant's left was Tom Waldhauser. To his right was, if I remember correctly, it was [another general officer].

(b) (7)(F) also testified that during the dinner he asked both Gen Amos and LtGen Waldhauser about the urination incident and the status of the USMC's response to it.<sup>10</sup> He stated:

I asked a question about the Marines who had urinated on the corpses.... I guess with the Taliban. I asked about it. Tom or, I don't remember whether it was the Commandant or Tom Waldhauser, but one of them said, you know, that was being looked into and there was an investigation ongoing, and that was the end of it.

LtGen Waldhauser recounted the following exchange with Gen Amos during dinner:

We were having dinner, and it was a long table similar to this [a rectangular table], and the Commandant and I were in the middle of the table sitting next to each other. He was on my right. Sometime during the dinner, the topic came up down the table of somebody mentioned that, hey, this – about the urination case or something like that, and that's when – I remember it like it was yesterday – that's when the Commandant leaned back on his chair, looked at me right in the eye very close and said, "Those guys need to be crushed."

LtGen Waldhauser testified that no one else heard the "crushed" comment because Gen Amos "was close to [him], a lot of noise in the area, and it was a tone that was just meant for [him]." LtGen Waldhauser recalled that he thought the comment was out of the ordinary, unexpected, and inappropriate. He stated he made no reply to Gen Amos.

Gen Amos testified he did not recall telling LtGen Waldhauser that he (Gen Amos) wanted the Marines crushed. Gen Amos also testified that it would have been natural for the urination incident to come up as topic of discussion during the dinner because:

[I]t was in the UAE paper in that hotel ... when we arrived and you looked at the newspaper in UAE, whatever the name of the thing

<sup>10</sup> The witness testified that when the incident was first reported in the UAE, news reports stated it had been Army personnel who had urinated on the corpses. He added he made no effort to correct that description with persons in the UAE who knew (b) (7)(F)



was, there was the picture. Of course, it was all in Arabic, but it had the picture – the famous picture of the Marines urinating on the three dead Taliban.... So could it have come up in a topical discussion? It might very well have because it was radioactive to include on the front page of the newspaper.

Gen Amos stated he did not remember conversing with LtGen Waldhauser about the urination incident during the dinner. He explained his recollection as follows:

It would be very unlike me to carry on any kind of official discussion certainly in a social setting. I just don't do that. And it would be counter to everything the way I do business that I'd have sat with one of my 3-stars on a very one-on-one, directed kind of conversation talking about tell me about the 3/2, tell me – and it kind of makes sense that I wouldn't have done it then because we had that discussion the next morning at the airport.... [N]ot only do I not remember, it would be highly unlikely that I would have sat there and had a private one-on-one with General Waldhauser.

#### Conversation at the Airport

The next day as they waited at a private airport for their respective flights out of the UAE, LtGen Waldhauser asked Gen Amos if they could speak privately. Gen Amos testified he was not surprised by this request because he had assumed they would have a private conversation about the urination incident.

LtGen Waldhauser provided the following description of his frame of mind going into the February 7, 2012, discussion with Gen Amos:

I will tell you that after the comment at the dinner, my thought was going into that meeting ... holy cow, I'm not sure that ... how I am framing this and what I'm going [to do], I'm not sure that's crushing these guys. I mean, I had that thought.

Witnesses described the passenger terminal at the airport where LtGen Waldhauser and Gen Amos met and stated that the two sat in a distinguished visitors' lounge as their aircraft were being prepared for departure. One witness described them sitting at the far end of the lounge, on a couch or couches set around a square table with refreshments on it, with no one around them. The witness added that he was observing Gen Amos and LtGen Waldhauser from a distance, along with several executive assistants to the general officers. He stated he made a comment to them about "it's peeing time," as in it was a good time to vacate one's bladder before departure, to which one of the executive assistants responded in a manner that made no sense to the witness. The witness testified he asked for clarification, and one of the assistants told him that Gen Amos and LtGen Waldhauser were talking about the urination incident.

LtGen Waldhauser testified he and Gen Amos sat together on a couch in the corner of a private airport lounge and spoke about the urination incident.<sup>11</sup> He described the conversation as private, lasting approximately 30 minutes. He added that he provided Gen Amos with a general description of his disposition plan and stated that at some point in the beginning of the conversation, Gen Amos asked him, “[W]ill you give them a general court-martial,” or “will you general court-martial all these individuals.” LtGen Waldhauser stated he replied, “No, I won’t do that.”

LtGen Waldhauser testified that Gen Amos told him “he [Gen Amos] wanted them [the specific Marines] out of the Marine Corps.” LtGen Waldhauser stated he told Gen Amos that his disposition plan would not guarantee discharges for any of the Marines. He added he told Gen Amos that he (Gen Amos) had the authority to discharge the Marines at the end of their current enlistments by denying them reenlistment.

LtGen Waldhauser stated he knew Gen Amos was not happy:

I knew he was upset when the conversation was over – why probably halfway through the conversations we were having this discussion it was kind of like I can’t believe we’re having this discussion, and we just kind of press ahead.... Somewhere in that discussion it was kind of like, you know, we’ve kind of gone too far here.

Gen Amos testified he was in the “listening mode” when LtGen Waldhauser began talking about the case. Gen Amos recalled LtGen Waldhauser talking about a disposition range for the proceedings falling between non-judicial punishment and summary courts-martial for the Marines involved. Gen Amos recalled asking LtGen Waldhauser if the Marines would go to a general court-martial. He also recalled asking LtGen Waldhauser if the Marines would be discharged.

Gen Amos remembered LtGen Waldhauser telling him that his attorneys were already talking to defense attorneys about pre-trial agreements.<sup>12</sup> Gen Amos testified he was “gravely concerned” at this point in his conversation with LtGen Waldhauser. He offered the following explanation of his thoughts:

[I am] [n]ot concerned about “You mean you’re not doing this?” but concerned about the process. And I asked him. I said, “Why are you even talking to the defense attorneys? I mean, why is your lawyer talking to the defense attorneys when we haven’t even completed this thing?” So this is 7 February. We’ve got six

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<sup>11</sup> A witness testified that the aircraft departed UAE from an executive airport catering to private jets and not an international airport.

<sup>12</sup> LtGen Waldhauser’s SJA reported in a February 9, 2012, email the receipt of proposals from defense attorneys for three non-judicial punishments and two summary courts-martial for their respective clients.

more weeks before that investigation was eventually completed sometime in the middle of March. “Why are you even having this discussion?” And I think I remember asking him that.

Gen Amos testified that he focused on LtGen Waldhauser’s decision to proceed, as Gen Amos believed, prematurely. Gen Amos testified that he was “incredulous”:

I keep using the term incredulous but, I mean, that’s where I was. We’ve got this high-visibility thing that’s taken place that the whole world has looked at, and even by 7 February it was still on the front page of just about every, just about every time you turned the TV on, to include the Middle East while we were there, you saw it. So the whole world is looking at this thing and they’re wondering what we’re going to do. And I’ve got my commander on the ground and he’s going, after just a couple of weeks of preliminary looking into this thing, “Okay, this is all I’m going to do here.” Not that I [Gen Amos] am responsible for the adjudication of a case. That’s not my job. But as service chiefs, and I’ll just talk about being the Commandant, being one of them, we’re responsible for the fair and equitable execution of the judicial process.

Gen Amos testified that his disappointment prompted him to explain the seriousness of the incident to LtGen Waldhauser:

I tried to convey the seriousness of what the hell is going on here, and he sees it only from the Component Commander’s perspective, the Commander of Marine Forces Central Command, the Commander of 1st Marine Expeditionary Force at Camp Pendleton.... So he’s looking at this thing – my words – myopically. It sounds like it’s being pretty critical. But he’s looking at it with a different lens than what I’m looking at it. I’m looking at it from Service chief, Washington, D.C., President of the United States, global TV, Secretary of the Defense, Secretary of State, Congress ... so I’m trying to convey that this is really, really serious ... So when I lean in, I’m trying to convey, “Tom, this is serious shit.”

LtGen Waldhauser confirmed that Gen Amos was not concerned about LtGen Waldhauser taking too long. He stated Gen Amos told him “he didn’t care if it took eight or nine months.” LtGen Waldhauser also stated that while the conversation was tense at moments, it was professional at all times. Both Gen Amos and LtGen Waldhauser testified that the conversation ended professionally. Gen Amos stated:

The conversation ended when it was over. It wasn't an abrupt end or okay, well, I've got to go; it was we were done talking and the conversation was over.

Gen Amos and LtGen Waldhauser shook hands and left the airport lounge for their respective aircraft. Gen Amos' aircraft departed the UAE at approximately 1:00 p.m. for Ramstein Air Base, Germany. LtGen Waldhauser's aircraft departed the UAE about the same time and stopped in Ireland en route to the United States.

#### Gen Amos' Reaction to the Conversation

Gen Amos testified that, as he was walking away from the conversation, he knew that LtGen Waldhauser sensed his disappointment:

[T]here's no doubt in my mind that he knew that he could read, he just kind of sensed my disappointment. And again, [my] disappointment wasn't that he wasn't doing what I wanted him to do. The disappointment was why in the world are we having this process short-circuited when we've never done that before.

Gen Amos recalled that as he left the meeting with LtGen Waldhauser and on his flight to Ramstein Air Base he was concerned about what had occurred in the meeting with LtGen Waldhauser. As he reflected on the conversation, Gen Amos was uncomfortable. He testified:

I distinctly remember sitting in the jet thinking my tone, my body language, my questions, probably not, probably the wrong thing to have said to him.

Gen Amos testified that although he was concerned about accountability and pace, the more he thought about the conversation the more he felt that LtGen Waldhauser probably thought he (Gen Amos) wanted harsher punishment. Once Gen Amos realized that LtGen Waldhauser had misjudged his (Gen Amos') disappointment, Gen Amos concluded he would have to change the CDA.

Gen Amos testified that he called Gen Joseph E. Dunford, USMC, Assistant Commandant, when his plane landed in Germany and discussed his conversation with LtGen Waldhauser.<sup>13</sup> Gen Amos added that he explained how his conversation with LtGen Waldhauser went and said, "I'm worried that I may have overstepped my bounds with Tom Waldhauser."

Gen Dunford did not recall the exact words Gen Amos used to explain his conversation with LtGen Waldhauser. Gen Dunford recalled Gen Amos telling him that he (Gen Amos)

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<sup>13</sup> Gen Dunford currently serves as the Commander, International Security Assistance Force, in Afghanistan.

needed to change the CDA. Gen Dunford added Gen Amos “shared with me that he thought based on some things [Gen Amos] said ... it would not be appropriate for [LtGen] Waldhauser to continue to be the convening authority.”

Gen Dunford summarized Gen Amos’ comments during the call:

I think [Gen Amos] probably expressed anger at the individuals who were involved in the video and I believe that his sense was that might’ve been an inappropriate comment to have with a convening authority and he realized that right away.

Gen Dunford added he immediately made the assessment, “Yeah, that’s inappropriate. You shouldn’t have that conversation with the convening authority.” He continued that he sensed Gen Amos had regretted his conversation with LtGen Waldhauser.

MajGen Ary testified he participated in Gen Amos’ call with Gen Dunford. He did not recall the exact words that Gen Amos used to explain his conversation with LtGen Waldhauser. He recalled that the discussion between Gen Amos and LtGen Waldhauser, as described to him by Gen Amos, was a forceful exchange. MajGen Ary added:

(b) (5)



Gen Amos testified that his intent in changing CDAs was to ensure that the CDA had “unfettered freedom.” At the end of this discussion, Gen Amos asked Gen Dunford to contact LtGen Waldhauser and inform him of the decision.

#### Gen Dunford and LtGen Waldhauser Conversation

LtGen Waldhauser testified that when his aircraft landed in Ireland, he was given a note to call Gen Dunford “as soon as possible.” LtGen Waldhauser added he called Gen Dunford after communications equipment was set up at his hotel; he estimated that his conversation with Gen Dunford took place approximately 9 hours after he departed the airport in the UAE. LtGen Waldhauser added that his conversation with Gen Dunford lasted approximately 15 minutes.

Gen Dunford stated the conversation “went along the lines of ... I just heard from the Commandant. He said he regretted the conversation that he had with you and he plans on making a change to the convening authority in the urination video case.” Gen Dunford added he made it clear to LtGen Waldhauser that the Commandant had made up his mind, presenting the news as “the Commandant has decided.” Gen Dunford recalled that LtGen Waldhauser sounded frustrated by the news. Gen Dunford testified he believed LtGen Waldhauser’s frustration was due to the fact that he had already invested considerable time and energy exercising his CDA duties. Gen Dunford told LtGen Waldhauser that Gen Amos would execute a formal letter withdrawing LtGen Waldhauser’s CDA designation and would contact him about the matter on the following Sunday (February 12, 2012).

LtGen Waldhauser summarized the conversation with Gen Dunford as follows:

So Gen Dunford and I got on the VTC [video teleconference], and Gen Dunford just said to me ... I’m not sure what you and the Commandant talked about, but he called me ... and was very concerned about the conversation that you two had.... Gen Dunford went on to say that the Commandant felt that he put you [LtGen Waldhauser], himself, and his position in jeopardy, and that, you know, he needs to make this right.

LtGen Waldhauser testified he “fully understood” why Gen Amos made the decision to replace him and believed there was no reason to ask to stay on the case. LtGen Waldhauser added Gen Amos realized they had gone too far in their airport conversation. He stated:

[T]he Commandant realized that he had crossed the line, and he had made a mistake, and this was his way to fix that. I mean, no more, no less, that in order to -- to alleviate any -- any thought or projection of undue command influence, you will put somebody else in there, and that’s, I mean, simple as that ... that’s the message from Gen Dunford.

### *Subsequent Events*

#### Formal Withdrawal of CDA Designation

On February 10, 2012, Gen Amos formally withdrew LtGen Waldhauser’s CDA designation by memorandum. The memorandum explained the action as follows:

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.

### Gen Amos and LtGen Waldhauser Video Teleconference

Both Gen Amos and LtGen Waldhauser testified that on February 12, 2012, they spoke via VTC about Gen Amos' removal of LtGen Waldhauser as CDA. Gen Amos testified that he told LtGen Waldhauser that he changed the CDA because he believed he had given LtGen Waldhauser the impression through his "comments" or "tenor" that he was disappointed in LtGen Waldhauser's decisions.

LtGen Waldhauser summarized the conversation as follows:

Gen Amos ... called me on that Sunday, and essentially, it was a real short conversation. He just ... kind of went on to say that this is probably the best way to deal with the situation ... we can move forward from this and that's when he told me.... [I]f you're ever asked about this ... just tell the truth.

LtGen Waldhauser testified that Gen Amos realized "he'd gone over the line" in the conversation at the airport. LtGen Waldhauser stated why he believed Gen Amos changed CDAs: "The Commandant made a mistake. The Commandant crossed the line ... and his remedy [to] eliminate [any] undue command influence perception, was to change CDAs, case closed." LtGen Waldhauser specifically addressed the question of whether Gen Amos removed him as CDA because he (Gen Amos) questioned LtGen Waldhauser's judgment. He testified that the question was "not the right question" and elaborated:

The reason I was removed from the case is right here. The Commandant said, "I crossed the line." The Commandant said, "My remarks could have caused a problem here." The Commandant said, "I need to fix this." That's why I was removed.

### Gen Amos' Designation of Replacement CDA

On February 10, 2012, when Gen Amos formally removed LtGen Waldhauser as CDA, he signed a separate memorandum designating LtGen Richard P. Mills, USMC, the Commanding General, Marine Corps Combat Development Command, as the new CDA for the urination incident cases. LtGen Mills became aware of the incoming designation after his staff was contacted by the "legal team at Headquarters."

LtGen Mills testified he assumed that the CDA was changed because LtGen Waldhauser, dual-hatted at the time, was "extremely busy."<sup>14</sup> LtGen Mills did not speak with Gen Amos or anyone else from USMC Headquarters about his appointment as CDA. LtGen Mills added he never spoke to LtGen Waldhauser about the CDA duties.

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<sup>14</sup> LtGen Waldhauser simultaneously served as Commanding General, 1st Marine Expeditionary Force, and Commander, Marine Forces Central Command.

LtGen Mills testified he provided “one or two updates” to Gen Amos, including an update during a May 2012 USMC Executive Off-Site meeting. He stated Gen Amos asked no substantive questions of him. LtGen Mills added that after providing the status update, he departed the meeting and left Gen Amos discussing matters with Gen John Paxton, Commander, 2nd Marine Expeditionary Force. He further testified he “simply was never pressured.”

LtGen Waldhauser confirmed the absence of communication between himself and LtGen Mills and provided the following explanation of why he did not talk to anyone about the reasons behind his removal:

I certainly didn't talk about it to [LtGen] Mills, and I did that for two reasons. Number one, I felt the conversation was a private conversation between the Commandant and one of his senior leaders, and I also knew that as a new convening authority, [LtGen] Mills, he needed to have, you know, the ability to have unfettered discretion and I never spoke to anybody about it.

#### Final Dispositions of the Urination Incident Cases<sup>15</sup>

The first charges against Marines involved in the urination incident were preferred on September 7, 2012. At the conclusion of all proceedings resulting from the urination incident, the CDA held nine Marines – seven enlisted Marines and two officers – accountable for misconduct. Only one of the nine Marines was involuntarily separated, a captain. The captain received an honorable discharge.<sup>16</sup> The other officer accepted non-judicial punishment and remained on active duty. Four of the seven enlisted Marines were medically retired. A fifth served out his enlistment and separated from the Service. One enlisted Marine remained on active duty. The seventh enlisted Marine died in a training accident.

None of the Marines faced trial by general court-martial. None of the Marines received a sentence of confinement. None of the Marines received a discharge from the Service under less than honorable conditions.

#### Discussion

We did not substantiate the allegation. We conclude Gen Amos did not attempt to influence the action of the CDA in violation of Article 37, UCMJ.

We found that the January 11, 2012, YouTube video of the urination incident generated considerable political and media interest and sparked national and international outrage. This

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<sup>15</sup> LtGen Mills made the disposition decision for all urination related cases with the exception of the final disposition decision in *U.S. v. Clement*. LtGen Mills' successor at Marine Corps Combat Development Command, LtGen Glueck, withdrew court-martial charges against Capt Clement and referred the matter to a Marine Corps Board of Inquiry.

<sup>16</sup> On March 5, 2014, the Secretary of the Navy approved the Board of Inquiry recommendation that Capt Clement receive an honorable discharge from the Service.



elevated interest in the urination incident led to SECDEF, SECNAV, and others publicly expressing concern about accountability for those involved. We found that Gen Amos was responsible for ensuring status updates were provided to the office of SECDEF. We also found that Gen Amos' personal reaction to the incident included a strong emotional component; as the leader of the Marine Corps, he was embarrassed, ashamed, and worried.

We found that by January 31, 2012, LtGen Waldhauser believed there was sufficient information to initiate disciplinary action against five Marines, the four who appeared in the video and the one who made the video. We found that he had ruled out general courts-martial by that point and focused instead on lower forums of punishment for the involved Marines. We also found that he had authorized informal plea agreement discussions with defense counsel for several of the Marines. We further found that neither of the two investigations into the incident was complete by the end of January 2012, and that the Hummer investigation was not completed until March 9, 2012.

We found that LtGen Waldhauser communicated with and sought guidance from Gen Amos concerning the "pace" of proceedings concerning the involved Marines. We found that the two agreed to meet in early February 2012 when each was in the UAE on temporary duty travel. We further found that Gen Amos and LtGen Waldhauser spent considerable time together on February 6-7, 2012, after Gen Amos arrived in the UAE from Afghanistan.

We found that on the evening of February 6, 2012, Gen Amos and LtGen Waldhauser attended a large, informal dinner among Marines, where they did not engage in any substantive conversation about the urination incident. They arrived at dinner at the end of a long work day, after the cancellation of a scheduled evening meeting with a senior UAE official. Gen Amos and LtGen Waldhauser sat next to each other at a crowded table in a loud, busy restaurant. We found that the event included cocktails and other alcoholic beverages and that the atmosphere at the dinner resulted in several separate conversations taking place at the table, rather than one conversation with the participation of everyone at the table.

We found that the urination incident came up during the dinner as a topic of discussion when the dinner's organizer asked about it. LtGen Waldhauser testified that at some point during the dinner, Gen Amos leaned back in his chair and quietly told him, "Those guys [the Marines involved in the urination incident] need to be crushed." LtGen Waldhauser testified he did not reply to Gen Amos, no one else heard the comment, and Gen Amos said nothing else about the incident that evening. Gen Amos testified he did not remember making the comment to LtGen Waldhauser.

We found that on February 7, 2012, Gen Amos and LtGen Waldhauser spoke privately for about 30 minutes about the urination incident at a private jet terminal in the UAE. LtGen Waldhauser testified that at the outset of the discussion, he was concerned that his proposed disposition plan for the five Marines could strike Gen Amos as insufficient.

We found that both Gen Amos and LtGen Waldhauser went into their conversation at the airport with pace-related concerns. Gen Amos questioned why <sup>(b) (5)</sup> [REDACTED]

(b) (5) and LtGen Waldhauser hoped for and sought pace guidance from Gen Amos.

We found that Gen Amos and LtGen Waldhauser's respective memories of their conversation at the airport were generally consistent with one exception. Gen Amos recalled asking whether the Marines would be discharged from the USMC. LtGen Waldhauser recalled Gen Amos telling him that he (Gen Amos) wanted the Marines discharged. Both recalled Gen Amos asking LtGen Waldhauser if the involved Marines would go to general courts-martial, to which LtGen Waldhauser responded, "no." LtGen Waldhauser told Gen Amos he (LtGen Waldhauser) could not guarantee that any of the Marines would be discharged from the Service, but that Gen Amos had the authority to deny reenlistment to the Marines at the end of their current enlistments. We found that when their conversation ended, both Gen Amos and LtGen Waldhauser departed the country on their respective aircraft.

LtGen Waldhauser testified that the conversation at the airport, while professional, "crossed a line." Gen Amos testified he "may have overstepped [his] bounds" during the conversation and that his questions were "probably the wrong thing to have said" to LtGen Waldhauser. We found that Gen Amos conveyed disappointment during the conversation with his body language, tone, and speech, and that LtGen Waldhauser sensed Gen Amos' disappointment.

Gen Amos testified that as he flew from the UAE to Germany, he questioned the impression he may have given LtGen Waldhauser and concluded that he had to fix any unintended interference he may have caused with the disciplinary process. We found that Gen Amos decided that the remedy required a change of the CDA and, upon landing in Germany, he spoke with Gen Dunford and MajGen Ary about the matter. Gen Amos directed Gen Dunford to notify LtGen Waldhauser of his decision. We further found that Gen Dunford spoke with LtGen Waldhauser the same day and conveyed Gen Amos' decision.

We found that on February 10, 2012, Gen Amos formally withdrew CDA authority in writing from LtGen Waldhauser. On the same day, Gen Amos formally appointed a successor CDA.

We found no evidence that the replacement CDA had knowledge of the events between Gen Amos and LtGen Waldhauser, was influenced by them, or faced any attempt at influence by Gen Amos. We further found that the final disciplinary actions taken against the Marines involved in the urination incident were consistent with the plan LtGen Waldhauser briefed to Gen Amos in February 2012.

Article 37, UCMJ, states that no person may attempt to coerce or influence the action of any convening, approving, or reviewing authority with respect to his judicial acts. Article 80, UCMJ, states that attempt offenses require specific intent.

We determined Gen Amos did not have the specific intent to influence LtGen Waldhauser. We also determined that while Gen Amos expressed concern about and questioned the pace of LtGen Waldhauser's proposed decisions at the airport meeting, he did not

direct LtGen Waldhauser to implement specific dispositions. At the time of their meeting, the investigations were not complete and no charges had been preferred against any of the Marines.

We could not determine whether Gen Amos told LtGen Waldhauser that he (Gen Amos) wanted the Marines “crushed.” LtGen Waldhauser testified that Gen Amos made the comment and Gen Amos testified he could not recall making the comment. We determined that the evidence was inconclusive. Even if we determined Gen Amos made the “crushed” comment, that single comment would not alter our report’s conclusion that Gen Amos did not attempt to influence the CDA’s judicial acts in violation of Article 37, UCMJ. The detailed discussion at the airport meeting and Gen Amos’ subsequent actions provided the best evidence of Gen Amos’ intent.

We further determined that Gen Amos’ prompt remedial action in removing LtGen Waldhauser demonstrated a lack of specific intent to influence the CDA and fixed any unintended interference with the disciplinary process. Additionally, Gen Amos’ appointment of a new CDA with whom he did not discuss the incident demonstrated Gen Amos’ intent to ensure that the disciplinary process was untainted by inappropriate influence. Accordingly, we conclude Gen Amos did not attempt to influence the judicial acts of the CDA in violation of Article 37, UCMJ.

#### V. CONCLUSION

We did not substantiate the allegation that Gen Amos attempted to influence a court-martial convening authority.

#### VI. RECOMMENDATION

We make no recommendation.

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Case 20131206-017598



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