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BRIEFING ON INFORMATION SURROUNDING THE MARINES UNITED WEBSITE

HEARING

BEFORE THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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BRIEFING ON INFORMATION SURROUNDING THE MARINES UNITED WEBSITE

TUESDAY, MARCH 14, 2017

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 10:00 a.m. in Room SD–G50, Dirksen Senate Office Building, Senator John McCain (chairman of the committee) presiding.

Committee Members present: Senators McCain, Inhofe, Wicker, Fischer, Cotton, Rounds, Ernst, Tillis, Sullivan, Graham, Cruz, Sasse, Strange, Reed, McCaskill, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Heinrich, Warren, and Peters.

OPENING STATEMENT OF SENATOR JOHN MCCAIN, CHAIRMAN

Chairman MCCAIN. Well, good morning.

The Senate Armed Services Committee meets this morning to receive testimony on information surrounding the unfortunate matter of the Marines United Facebook group.

I want to thank each of our witnesses for appearing before the committee this morning: Acting Secretary of the Navy Sean Stackley; General Robert Neller, Commandant of the Marine Corps; and Sergeant Major of the Marine Corps Ronald Green. Sergeant Major, good morning and thank you for coming and thank you for your appearance here.

The committee is saddened and disturbed by allegations that female marines have been subjected to online harassment and abuse, including denigrating comments and nonconsensual sharing of images apparently in some cases by fellow marines. Our witnesses are here to inform us about these allegations and what is being done to address the impact on the Service, especially those marines who have been victimized.

All who love the Marine Corps are embarrassed and outraged by these allegations, none more so than our witnesses today. General Neller, since these allegations were made, you have been unequivocal in communicating to the men and women you lead that behavior like this is unacceptable and fundamentally opposed to the values of the Marine Corps.

I want to reemphasize the Commandant's message to marines last week. The Members of this committee share your hope that marines who have been victims of harassment and abuse will report that conduct to their chain of command, chaplain, or victim leader counsel. It is our expectation that Marine officers and lead-

ers will support those victims, protect them from reprisal, and do all in their power to prevent abuse of any marine.

At this time, we do not know how many marines were involved in these allegations of harassment and abuse or what motivated those who were to engage in such disgraceful and unprofessional behavior. We do not know the origin of images of female marines on the Marines United Facebook group, some of which may have been taken or shared without their consent. We do not know how many marines may have been targeted.

This committee expects the Department of the Navy and its senior Marine Corps leaders to provide updates on the investigation into these issues when appropriate, as well as keep the committee apprised of any corrective action the Marine Corps may take concerning policies, procedures, and the education and training of marines. We realize that much of this information may be law enforcement sensitive due to ongoing criminal investigations. For that reason, immediately following this open hearing, the committee will proceed to a closed door session to hear from our witnesses on these sensitive matters.

While there may be much that we still have to learn, there is much that we know already. We know that the actions of those marines involved in Marines United do not reflect the culture and values of their service, not only honor, courage, and commitment, but also mutual respect for all of their fellow human beings, values that are upheld and lived each day by the overwhelming majority of marines. That is why Americans are proud of our Marine Corps, because the conduct of most marines is deserving of our praise and respect.

We also know the challenges we see in our military often reflect similar challenges confronting broader society. In this case, we are all confronting the unique challenges posed by the advent and proliferation of social media which, like any technology, is an enabler, an enabler of incredibly good and decent things, but also dark and troubling things. The same technology that allows one group of marines to create a support group to help their battle buddies struggling with post-traumatic stress can be used by another group to humiliate and demean their fellow female comrades.

At the same time, we know that those who serve in the profession of arms must be held to a higher standard. They would not want it any other way. We know that the Marine Corps cannot fight and win the Nation's wars if marines do not respect and trust one another. This is not just a matter of good personal conduct. It is a matter of military effectiveness.

That is why any marine who disrespects a fellow marine dishonors the values of the Marine Corps and harms its mission to defend the Nation. This kind of behavior is unacceptable for any marine or any member of the United States Armed Forces. The actions of our civilian and military leadership, not just in response to these allegations, but at all times, must demonstrate that such misconduct will not be excused or tolerated.

Finally, as Members of the committee are aware, these allegations surrounding Marines United are currently under investigation by the Naval Criminal Investigative Service (NCIS). Therefore, I encourage Members of the committee to please reserve any ques-

tions that may be law enforcement sensitive for the closed session to follow. I do not want this committee's proceedings to be construed in any way that might interfere with the swift delivery of justice to those individuals that may have engaged in criminal behavior.

Once again, I thank the witnesses for appearing before the committee today.

Senator Reed?

STATEMENT OF SENATOR JACK REED

Senator REED. Well, thank you very much, Mr. Chairman, for holding this very important session to give the Marine Corps the opportunity to give an initial briefing on what they know and what they do not know about reports of abhorrent behavior by some of our marines using the Marines United website. It is unusual for the committee to receive a briefing like this one on an ongoing criminal investigation, but this issue is so important that it warrants this kind of attention. However, we must take care to ensure that we do not put the Commandant of the Marine Corps in the position of making statements that later could be alleged as exercising unlawful command influence and therefore disrupting the criminal investigation.

The nonconsensual posting of explicit photos of female marines on a public website is repugnant and just plain wrong and inexcusable. All of us who have had the privilege of serving in uniform know the value of a cohesive unit where all Members of the unit looked out for each other and took care of each other. I can only imagine the harm that this type of behavior can have on morale and unit cohesion. Our servicemembers must have confidence that their fellow servicemembers always have their back. There simply is no room for behavior that humiliates and degrades a fellow servicemember.

In my view, the Marine Corps must and will attack this problem with the vigor that the Marine Corps has demonstrated time and time again. It should begin with a good, thorough investigation to establish provable facts that can be used to hold offenders accountable for criminal conduct. I will be anxious to hear whether the NCIS has the resources and expertise to fully and completely investigate this matter. If they do not, we need to help them get those resources and that expertise. Once the investigation is complete, commanders will have the task of taking appropriate action based on the findings of the investigation.

Aside from the immediate issue of marine misconduct on the Marines United website, the Marine Corps must also address the culture that allowed or facilitated that misconduct. I will be interested in hearing about actions the Marine Corps will take to improve the culture, especially in a Marine Corps that is in the process of fully integrating female marines into its ranks.

With that, Mr. Chairman, I look forward to our briefings, both the open and closed sessions. Thank you.

Chairman MCCAIN. Thank you.

We will begin with you, Secretary Stackley. Welcome.

STATEMENT OF HONORABLE SEAN J. STACKLEY, ACTING SECRETARY OF THE NAVY

Mr. STACKLEY. Chairman McCain, Ranking Member Reed, Members of the Armed Services Committee, thank you for this hearing.

Discovery and investigation these past several weeks into the toxic, predatory behavior harbored by the website, Marines United, has uncovered a grievous breakdown of good order and discipline, a violation of our core values, and what amounts to an insider threat. Some unknown number of marines or former marines, when denigrating their fellow marines, undermined the very honor and integrity and unit cohesion that has long underpinned the strength of the Corps.

Marines United is a bell ringer. Beyond the emotions that surround this issue, anger, revulsion, frustration, we are committed, dedicated to fixing this issue and our immediate actions are threefold.

First, we must take care of those marines who have been victimized by this behavior, counseling, legal services, and beyond in strict confidence inside and outside the chain of command. Every resource will be made available to those seeking support.

We are prosecuting the matter of Marines United to the full extent of our abilities, and we will hold accountable those who have violated the standards, going by law, by policy, by code. Of the 30,000 members reported to be on Marines United, we do not know how many are, in fact, Active Duty marines, much less how many in fact participated in this denigrating affair. Getting to the facts will take time, but the Navy Criminal Investigative Service is working every lead, every path available to overcome the challenges we are running into posed by nameless, faceless predators and cyber bullying on social media.

Perhaps most importantly, we will get at the root underlying issues in order to eradicate this cancer. The task force formed by the Commandant is central to this effort which today involves senior officers and enlisted. We will expand to include the expertise called upon by this problem and in the long run will involve commitment of every tier of leadership within the Marine Corps. This, again, will be a long road, but we are on the road for good and we will share with the committee our efforts, our course, our progress on that course as we move forward.

Every young man and woman who takes the oath to support and defend our Constitution, who puts on the uniform and puts their life on the line to defend our way of life here at home is owed utmost trust and respect by every American. Any breach of that trust and respect within the very ranks of the Services themselves must be dealt with immediately, decisively, unceasingly before, like a cancer, it steals from us our strength, our spirit, our honor. We will be immediate, decisive, and unceasing in fixing this problem and in defeating this attack on our core values.

Thank you, Mr. Chairman. I look forward to addressing your questions.

Chairman MCCAIN. Thank you.

General Neller?

STATEMENT OF GENERAL ROBERT B. NELLER, USMC, COMMANDANT OF THE UNITED STATES MARINE CORPS

General NELLER. Chairman McCain, Ranking Member Reed, senators of the committee, normally I appear before this committee to take an opportunity to tell you about the extraordinary actions and things that your marines are doing at home and around the globe. Today, however, is different. I am here to discuss the details of some truly disturbing and unacceptable actions that have allegedly been committed on social media primarily against the women of our Marine Corps.

The recent release of information first uncovered by a combat-wounded marine reporter about the online posting of explicit and lewd pictures and even more troubling derogatory, demeaning, and in some cases sexually violent comments about female marines are why we are here and what we are going to talk about. Such actions pervert our culture and bring me here.

As I am sure you did, I received this recent news regarding actions on the Marines United Facebook site with a mixture of emotions: disappointment, shock, anger, disgust, and outrage. The Marine Corps I have served for over 40 years has a problem and we intend to fix it.

I struggle with labeling the problem we face. Some say we have a problem with our culture. Some say it is an insider threat. My natural inclination is to resist this because I believe in my heart the Marine Corps culture is based on our core values of honor, courage, and commitment. It represents who we are. The online behavior of some individuals, whether they are currently serving marines, former marines, or others who simply wandered in, have attacked our Marine Corps values, our ethos.

We draw our strength from the team. Everything we do in training from day one is focused on the team and not the individual. But some seem to have forgotten that every member of our team is an equal and a valued member of our Corps. Every marine has a role to play. Every marine who earns our title commands the respect of their fellow marines.

We proudly advertise the transformation that occurs at recruit training and officer candidate school, first by the methods by which we recruit, train, and transform young men and women from citizens to marines, but the transformation is not perfect in all cases. Some marines can lose their way and disregard or fail to comprehend our ethos. At every level of leadership, we must do a better job of sustaining this transformation and eliminating any behavior that targets any individual as less than a teammate or a fellow marine. We must attack any behavior that has a corrosive effect on good order and discipline of our Corps.

I came in the Marine Corps with the problems of the 1970s shortly after Vietnam. Drug use and race relations were tearing us apart. Some of you were there then and you remember this. Our Commandant at the time, General Lewis Wilson, took a firm stance to get our Corps back to true north. He improved our recruiting standards and made it his personal mission to address those who cannot or do not want to measure up to our standards who needed to find another place to perform.

I believe we face a similar situation today. The vast majority of marines, past and present, are American citizens who are good and decent people. They are as upset by the behavior represented on Marines United as you and I. I am calling on all marines to take a stand against this destructive conduct, to take a stand and support and respect every marine, to demonstrate to the American people who we really are, that we embody our ethos of honor, courage, and commitment.

When any Marine unit goes into action, there are never bystanders. We all have a role to play. We are all to be fully committed to the mission. The same is true in garrison and the barracks back here at home. There can be no bystanders. We must all be engaged as teammates. Every marine has a role to play to ensure that our team remains strong.

I would ask to take this opportunity to speak directly to every female in our Marine Corps, past and present. I know I am asking a lot of you right now, but I ask you to trust the leadership of the Marine Corps to take action and correct this problem. I ask you to trust me personally as your Commandant and when I say I am outraged that many of you have not been given the same respect when you earn the title "marine." I know you are not asking to be labeled as victims, for anyone's pity. I know you would find that as insulting as the recent behavior and comments on social media. I know what you do for our Corps, for our team, and what you have contributed, to include during the past 16 years of combat in Iraq and Afghanistan. I know when you earn the eagle, globe, and anchor, you wear it as proudly as the marines you are.

To the men in our Corps serving today and those who no longer wear the uniform, you are still marines. I need you to ask yourselves, how much more do the females of our Corps have to do to be accepted? Was it enough when Major Megan McClung was killed by an IED [Improvised Explosive Device] in Ramadi or Captain Jennifer Harris killed when her helicopter was shot down while she was flying blood from Baghdad to Fallujah surgical or Corporals Jennifer Parcell and Hally Ann Sherrod and Ramona Valdez, all killed by the hands of our enemies? What is it going to take for you to accept these marines as marines?

I am committed to making this right, and I need all marines equally committed. We all have to commit to getting rid of this perversion in our culture. Enough is enough.

So, ladies and gentlemen of the committee, we will take action to correct this stain on our Marine Corps. I have no illusions or delusions about how difficult that will be, but that does not mean we are going to stand by and watch it. It cannot go on anymore.

I am prepared to answer your questions.

Chairman MCCAIN. General Neller, I want to thank you for that statement. I think it is strong and it is powerful and, frankly, it is reassuring to this committee about your commitment.

Sergeant Major Green, do you have any comments to add to the Commandant's remarks?

STATEMENT OF SGTMAJMC RONALD L. GREEN, USMC, SERGEANT MAJOR OF THE MARINE CORPS

Sergeant Major GREEN. Good morning, Chairman. Senator McCain, Ranking Member Senator Reed, and all Members of the Congress. I want to thank you all for allowing the Marines Corps to come before you today, the leadership, and explain exactly what we are doing.

I did not prepare any words, but I can tell you that no one is more outraged than the leadership you see sitting before you today. This tears at the very fibers that bond us together as we fight for the Nation's freedom and liberty.

We are protecting our victims. We are allowing the legal system to go forward so that we can bring those who have committed these crimes before the Commandant, the leadership, and hold them accountable. We are researching our policies and reinforcing the gaps. I am prepared to do whatever it takes to protect not just enlisted marines, but all marines and their dependents and those who serve under the eagle, globe, and anchor.

Thank you for the opportunity.

Chairman MCCAIN. Well, thank you, sir, and thank you for your outstanding leadership.

General Neller, has the Marine Corps embarked on an effort to communicate with and assist identifiable victims?

General NELLER. Sir, as far as the Marines United, there have been a small number of victims or people who have claimed that they were targeted by this website. And so we are talking to those, and NCIS is working investigations on those that they are aware of. But the number is too small. Again, we need others to come forward.

Chairman MCCAIN. What are you doing to encourage others to come forward, General?

General NELLER. This hearing is an opportunity to ask marines to come forward, not just marines that may have been victimized but marines that have been aware of this. I think that is starting to happen. We are getting information from other men, other male marines, that they know about this, and they are, as I stated, I believe as upset about this as we are.

We had a press conference the other day where, again, I asked marines for their help. We have gone out to the leadership, told them the path where they can direct marines. I have directed commanders to go out and talk to their marines about this and directed them that if anyone comes forward, they can be directed toward their victim advocate, to their chaplain, to their victim legal counsel, or the chain of command, and they are going to forward this. We put a site up on our marines.mil webpage. If you are aware of any actions of this or someone is being bullied or harassed in cyberspace, to contact this certain number or an email address or their chain of command. I know NCIS has done the same. So we have gone out in any possible forum that we can to ask marines to come forward if they are either a victim here or they are aware of any of this behavior.

Chairman MCCAIN. You are assuring them that there would be no reprisal or retaliation?

General NELLER. They have my word that the leadership will not take retribution against them. I know that is a big issue. I have talked to some of the Members here about that. That is why I know it is difficult because I cannot necessarily guarantee—social media—one of the insidious natures of this problem is there is a certain level of anonymity out there. So if you were to push back on any of this, you immediately get attacked by the crowd and they are anonymous. I think for many of us who do not participate in that type of behavior, that is foreign to us.

I will admit this is something—I am not a social media person. We use it to message marines and talk about the good things that marines do. But sites like this are not a place that I would think any of us would frequent, even for the altruistic and positive things, as you mentioned, Chairman, that Marines United was set up to do, how veterans deal with whatever issues they had coming back from the fight.

So there is risk. I cannot protect people necessarily on social media. I can ensure that the chain of command is going to take action, and I can direct commanders to take any allegations that anybody makes. They are going to take them and follow them through and report them to NCIS or do an investigation. But our ability to—and this is not an excuse—manage what happens on social media, if it remains up, is an issue.

I will say, though, that when we have seen this type of behavior and we have gone to the organizations that host this, they have, in general, been very helpful with us with taking these sites down. But when they do that, what we have also seen is then they move. I would prefer to get into it in the closed discussion about what the legalities are about certain things that happen in cyberspace because there are certain things about the law that are not always going to be helpful to us getting accountability. Again, that is not an excuse, but I think there are some things that we may need your help with.

Chairman MCCAIN. I agree.

Secretary Stackley, can commanders use the Uniform Code of Military Justice (UCMJ), to hold personnel accountable for transmitting, receiving, viewing, or possessing photos without the consent of the person in your view?

Mr. STACKLEY. Yes, sir. Now what we are trying to do is actually run to ground each instance, each example that we can find where we have the perpetrator, we have the evidence that frankly has been preserved so we can hold them accountable in accordance with articles 120 and 134 of the UCMJ.

Chairman MCCAIN. Obviously, General Neller pointed out one of the challenges we face, and that is of these websites just morphing over to another site after they are shut down.

Mr. STACKLEY. Yes, sir. I used the term "nameless/faceless." It is very difficult to identify the individuals that are on these websites. As we work with the owners of the websites, we have to deal with First Amendment rights. We have to deal with Privacy Act issues. So we are pushing it as far as we can to get every piece of evidence that we can find. A key to this, as the Commandant described, is to have individuals come forward. So we are trying to reach out, not just get the word out for people to come forward, but also pro-

vide an environment where they feel safe and secure to bring their case forward.

Chairman MCCAIN. Senator Reed?

Senator REED. Well, thank you very much, Mr. Chairman.

I would just like to ask one question because I know there is great interest of my colleagues in the public session, and then we have a closed session later.

General Neller, this is not the first experience recently the Marine Corps has had. In 2013, there was cyber bullying of female marines. How did you react to that issue, and what lessons have you learned, and how are you applying those lessons to this situation?

General NELLER. Senator, we went back and looked at that and looked at all the actions. I can give you a long list of things that we did as far as addressing sexual assault, changing values-based training at all our different levels of training. There was a policy written about conduct on social media in 2010, but it was not focused on this type of thing. We are in the process of actually issuing out today an updated policy on conduct on social media and what is acceptable and not acceptable and what is a violation of a lawful order or article 134 or article 120(c).

So there was a lot of training that we did, but looking back at it—I mean, I can only speak for myself, Senator. We were focused on the issues of sexual assault which were very important at that time. I do not think we got at the social media thing to the level that we are going to get at it now.

I put myself in that category. I went back and I thought about all the stuff we talked about and all the things that the Commandant, General Amos, did with the Heritage brief, about our values, about how we treat each other, the things we have done since about discussing alcohol abuse and protecting what you have earned, and even the message I put out after the first of this year stating we need to treat each other better. But when I wrote that, I did not have in my mind this particular—so I have no excuse for that. We were dealing with a lot of things.

So now this is front and center. I think part of it is I think victims were afraid to come forward because if they came forward, they were going to be attacked tenfold on social media again. I think for those that do not participate in this domain, I think we are ignorant. I am not ignorant anymore. I am trainable and I accept responsibility for that. But we were focused on other things that we were trying to get at. I do not think social media was absent from that, but I do not think it got front and center like it should have at the time.

Senator REED. Thank you very much.

Again, I think we all recognize the seriousness of this issue. It goes to the very heart of the Corps, not just the Marine Corps but every service. You cannot have individual marines, soldiers, sailors, airmen, coast guardsmen who are marginalized because of gender or any other characteristic. So we have a lot of work to do, both you and the United States Congress.

Thank you, Mr. Chairman.

Chairman MCCAIN. Senator Inhofe?

Senator INHOFE. General Neller, the first quote that I heard from you was that those who are involved will be held accountable. I know your background. I know you. I have every confidence that is what is going to happen. I have no questions.

Chairman MCCAIN. Senator Shaheen?

Senator SHAHEEN. Thank you, Mr. Chairman.

Secretary Stackley, a November 2015 report from the Government Accountability Office (GAO) found the Department of Defense measures to assess the effectiveness of its sexual assault prevention efforts were not fully developed and missing key attributes. Can you tell me if anything has been done since that GAO report to address that?

Mr. STACKLEY. Yes, ma'am.

Senator SHAHEEN. Can you tell me specifically what?

Mr. STACKLEY. Okay. There are a list of initiatives that have gone out in terms of first identifying cases of sexual assault. This gets right down to everything from anonymous surveys, to interviews, to capturing reports and then running reports to ground.

I could provide examples of things that have been done, but when we look at the statistics and the results, what we are trying to do is correlate measures that were taken with results that we are getting. Frankly, we are challenged to do that. The statistics move around, and within the Department of the Navy, within our SAPRO [Sexual Assault Prevention and Response Office], I am trying to correlate what actions are we taking that are giving us positive results that we have confidence in so in fact we can grow those actions versus a number of initiatives that we cannot quite correlate to the results that we are looking for.

Senator SHAHEEN. Well, I would argue that one of the challenges is that people are not being held accountable in a way that sends a very strong message to others that they serve with that this is unacceptable behavior.

General Neller, according to a 2014 RAND military workplace study, the Marine Corps has the highest rate of sexual assault among the service branches. I know that we are not talking about sexual assault directly as we often think about the definition in this scandal, but I do believe there is a correlation between the two. So can you just respond to why you think that is?

I appreciate your statements and the statements of everyone here about needing to address this issue, but understand that this committee has heard those kinds of statements for as long as I have been on the committee and I think much longer. So it is hard to believe that something is really going to be done when we hear this repeated again and again and we see these kinds of situations again and again. So why should we believe that it is going to be different this time than it has been in the past?

General NELLER. As I stated earlier, Senator, this particular issue—I mean, we can talk about sexual assault and the numbers. As the Secretary said, we have struggled. I had expected that the numbers would go up when we started our training back in 2013 to try to get after sexual assault per se—and I have talked to Senator Gillibrand, Senator McCaskill about this—and that they would flatten out and then they would go down. They flattened out but they have not gone down.

I can give you some other statistics. I can track every one of these allegations to show you how it was culminated in some sort of action or no action.

Why is it going to be different now with the social media I think we addressed the action of individuals which is sexual assault or bullying, but I think the bigger issue is within the culture, we have just a fact with all marines that all marines are marines. The female marines that are there are a small group in our Corps, and for whatever reason, there are still some number—and I do not think this is separate from the sexual assault issue, but this issue of denigration of women, objectification of women, misogyny, however you want to articulate it is just bad behavior. It is tied to the way that some group of male marines look at women in the Marine Corps.

I think we can fix that. I think we can fix it by holding those accountable who do not want to accept the fact and we make it part of—we got to tell commanders, hey, look, there are things you can do out here within the UCMJ if those parameters are met. But this is a very difficult problem.

On the sexual assault thing, I am not going to give up on any of this. I still think part of our—I mean, I could give you the demographics and that is an excuse. You know, the percentage of the marines and what their ages are and all that and the numbers. We are a young force. Okay. But they are marines and they are expected to conduct themselves at a higher level. You expect that. I expect that.

I think that alcohol abuse is another problem that we are going to have to deal with that I think we will get after that. But this is all about our leaders going out there, setting the example, and expecting the behavior is going to be in a certain way.

Is it going to be different? It has got to be different. That is my charge to myself. I have got to go out there and, as the senior marine, say this is the way it is going to be, and if you are not going to get along—if you have a problem with this, then, as I mentioned in the video I did, you need to ask yourself do you really want to be a marine. If that is not going to change it, then—I believe it is. I have heard enough from enough men and women that are seniors out there that they realize—why they did not realize it before I have no excuse—that we are going to change and that we can change. All I would ask is an opportunity to address this. I know you have heard that before, but that is my ask.

Senator SHAHEEN. Thank you, General. I would suggest that you use the term "survivor" rather than victim for those people who have been attacked.

General NELLER. Yes, ma'am.

Chairman MCCAIN. Senator Fischer?

Senator FISCHER. General, this behavior has to change. It has gone on for too long, and we need to see those changes.

You spoke about social media and the lack of recognition that you had on what is going on on social media. The Corps does have a policy on social media. Is that correct?

General NELLER. Yes, ma'am, we do.

Senator FISCHER. You have spoken today about making changes to that policy. Do you have any ideas on how that policy needs to

be changed? What would make a new policy different and more effective at this point?

General NELLER. I believe the policy that we revised is focused more on certain behaviors such as the one we are here to discuss today on social media and that to tell all marines that these types of things are unacceptable. They are not part of the inner marine and they are also punishable under the Uniform Code of Military Justice. The previous policy said that, but it did not say it quite as directly.

But it is also going to take leadership to go out and reinforce that, to not just hide—not hide, but to use a piece of paper. But they are going to have to go out and sell it. They are going to have to talk about it. They are going to have to make commanders and senior enlisted understand that this has got to change.

Our marines—they use social media. They use it for a lot of good things, as was mentioned by the Chairman. We use social media to tell the story of the Marines, and that is fine. But marines have got to understand that using the social media to degrade, denigrate, be disrespectful to another marine is not just not who we are but it is illegal and that if you are found doing this, then you are potentially subject to the Uniform Code of Military Justice.

Senator FISCHER. I assume marines are educated on the current policy?

General NELLER. They are, but I do not believe—I cannot tell you, Senator, that it is done with enough time or reinforcement. We start talking to marines about the values and ethos of the inner marine when they are still waiting to go to recruit training. Whether or not there are specific discussions about this type of thing, I cannot say to you that it is done in a manner that is satisfactory to me both in the quality of the discussion and the quantity. But it will be.

Senator FISCHER. Have there been any punishments for marines who have violated the current policy that you have?

General NELLER. Senator, I cannot give you a specific quote that this individual did X and was found guilty at Y. I would ask to take that for the record and get back to you. I asked that question myself. But much of this type of behavior should be held, could be held accountable at a nonjudicial punishment, which is an administrative action, and I do not have the data to give you that answer.

[The information referred to follows:]

To date (since the report of misconduct involving members the Marines United Facebook group), there have been at least 116 subjects, suspects, or persons of interest (hereinafter, collectively, "subjects") reported for alleged online social media misconduct involving 22 non-DOD civilians and 94 Marines as subjects. Of the 94 cases in which the Marine Corps maintained at least administrative jurisdiction, 68 cases have reached disposition and 26 remain in a pending status. In terms of severity of action, there have been guilty findings at 5 special courts-martial and 1 summary court-martial; 10 cases adjudicated via non-judicial punishment; 5 administrative separations; 25 formal adverse administrative actions; and, in 22 cases, no formal administrative action. In each of these cases commanders have exercised their independent and unfettered disciplinary disposition authority in reaching their decisions. The investigation into the Marines United Facebook Group involved a review of more than 120,000 images from over 170 other websites. Investigators determined that while there were more than 22,000 images with persons depicted who had a possible Department of Defense affiliation, there were approximately 7,867 images with persons depicted who had a possible Marine Corps affiliation. Employing technology to include facial recognition software, investigators determined that only 68

potential victims were identifiable of the 7,867 images. Further, investigators confirmed 31 of the 68 potential victims, and only 8 confirmed victims were able to identify a subject. These subjects are factored into the 116 subjects reported for investigation and disposition.

Mr. STACKLEY. If I could add. We have been able to track individuals who have used government computers to access these types of websites, and then we are able to identify the individual and clearly bring punishment to bear.

Senator FISCHER. That was my next question. Were government computers used to access these websites or to post anything on them?

Mr. STACKLEY. We have not been able to find any incidents of government computers being used to access or post, but we are continuing with the investigation.

Senator FISCHER. General, how well do we understand the membership of this group and how it breaks down between former marines and Active marines and also retired marines? Do you have any information on that right now?

General NELLER. Senator, all I can tell you is we believe the numbers of individuals that belong to Marines United was about 30,000 on their public facing Facebook page. How many of them are Active or former or other services or civilians I do not have the answer to that. The NCIS is looking into that.

The place where these individuals went to post these pictures and make their comments was a link to a server hosted by another Internet provider, which has since been taken down. The numbers that we believe had access to this site was much, much smaller than 30,000. I would ask for NCIS to give you that number in the closed session.

Senator FISCHER. Thank you.

Chairman MCCAIN. Senator Gillibrand?

Senator GILLIBRAND. Thank you, Mr. Chairman.

General Neller, the military, the Marines, have been aware of online victimization, online exploitation of other marines since 2013 because there is a letter here from Jackie Speier to Chuck Hagel and General Amos with screenshots. So there is no mystery that this has been going on for a very long time. It was right in front of you and the command to do something about it since 2013.

[The information referred to follows:]

UNITED STATES MARINE CORPS
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:
May 29, 2013

The Honorable Jackie Speier
U.S. House of Representatives
211 Cannon House Office Building
Washington, DC 20515-4183

Dear Representative Speier:

Thank you for your correspondence of May 8, 2013, regarding the deplorable images in social media that denigrate women in the U.S. Marine Corps. We share your indignation; I am responding on behalf of the Secretary of Defense. These depictions are neither official Marine Corps communications nor reflective of the U.S. Marine Corps' sentiments toward women.

Social Media is a valuable communication medium, but it also provides abuse opportunities. It helps us connect and share ideas and information with family and friends in ways we never thought possible just ten years ago. On the other hand, it provides opportunities for unscrupulous individuals to publicize any content whatsoever, regardless of tastefulness, discrediting content, or operational security. Recognizing the benefits and risks of social media, the Marine Corps published its guidance for social media use in 2010 as well as the requirement to educate, train, and promote awareness for the responsible and effective use of internet capabilities. In 2011, I promulgated a proactive social media policy handbook and actionable regulations concerning unofficial internet posting. All regulations and guidance are publically available online, and to date, the Marine Corps' effort toward responsible social media use remains unparalleled.

Recognizing the spectrum between proper social media use and abuse, our policy encourages access yet prohibits participation that discredits the Marine Corps or undermines good order and discipline. In our view, Marines are responsible for all content they publish on social networking sites, blogs, or other websites. For enforcement, we rely upon investigative bodies such as Naval Criminal Investigative Service, the Criminal Investigative Division of the Provost Marshall, the Inspector General, and the local command. Since 2009, for example, the Marine Corps Inspector General (IG) has received 166 complaints regarding social media misuse in general and has 14 open cases as of the date of this letter. The IG also actively inspects units throughout the Marine Corps to verify command compliance with our social media policies and training requirements. The Marine Corps Cybersecurity Assessment Team (MCCAT) also conducts weekly assessments on a discreet number of social media sites in order to protect against senior official impersonators and to prevent damage to individual and institutional reputations. Specific authorities govern and narrowly tailor the MCCAT's actions. Additionally, our Trademark and Licensing Office monitors the internet for service discrediting material that might violate Marine Corps protected trademarks. Lastly, in an effort to restrict the Marines' access to unscrupulous sites, we are currently examining whether the Armed Forces Disciplinary Control Board procedures found at 32 C.F.R 631 as well as other regulations that place business establishments "off-limits" can legally and effectively place web pages and sites "off limits."

When we become aware of any service discrediting material in the public forum and can identify the responsible individual, we use our available resources to disassociate the Marine Corps from the material and take appropriate individual and permissible commercial corrective actions. In June 2010, for example, the Marine Corps took formal administrative action upon a Sergeant and Lance Corporal who posted Facebook remarks that were disparaging to women. In April 2013, we took formal administrative action upon 4 Marines who also had posted service discrediting content on Facebook.

Notwithstanding the limited success, enforcing social media policies has been challenging for myriad reasons. The anonymous nature of social media, the use of online pseudonyms, and the magnitude of available sites present key challenges to curtailing inappropriate postings. The potential for inappropriate or service discrediting internet postings extends beyond a handful of sites like Facebook, Tumblr, MySpace, and Youtube, spanning across the breadth of public expression and commerce at large. Moreover, for our IG in particular, social media complaints reflect only 2.46% of the total IG complaints received since 2009. As a result, our IG lacks the resources and infrastructure to actively and consistently monitor the countless, ever-evolving social media sites. Where online activity is part of a complaint, we nonetheless make our best effort to identify the individuals responsible.

Comprehensively addressing inappropriate online activity and proactively enforcing our standards in social cyberspace requires manpower and technological resources beyond our current capabilities. Overwhelmingly, the Marine Corps succeeds in transforming society's young men and women into courageous defenders of our freedom. Facilitating this transformation is a daunting task, and Marines by and large possess and act in accordance with our values of honor, courage, and commitment. It is saddening that social media, a tool that can be used for good, has armed a vocal minority with an anonymous and irretrievable loudspeaker. In addition to our enduring efforts, progress in this arena will require legislation that provides adequate tools to practically and lawfully curtail social media misuse.

I thank you for your continued support of our service members throughout the Department of Defense. Please let me know if you have any further questions.

JAMES. F. AMOS
COMMANDANT OF THE MARINE CORPS

We have countless victims who have come forward, and they are not just being harassed online. Once their name, face, where they are stationed is posted, do you think the harassment ends online? It does not. I spoke to a marine yesterday. Excuse me. I spoke to a civilian yesterday who has been continued to be harassed in her community because her ex-boyfriend exploited her online.

So I have to say when you say to us it has got to be different, that rings hollow. I do not know what you mean when you say that. Why does it have to be different? Because you all of a sudden feel that it has to be different?

Who has been held accountable? I very much align myself with Senator Fischer's comments. Who has been held responsible? Have you actually investigated and found anybody guilty? If we cannot crack Facebook, how are we supposed to be able to confront Russian aggression and cyber hacking throughout our military?

It is a serious problem when we have members of our military denigrating female marines who will give their life to this country in the way they have with no response from leadership. I can tell

you your answers today are unsatisfactory. They do not go far enough.

I would like to know what do you intend to do to the commanders who are responsible for good order and discipline. All of this behavior is in violation of article 120 and article 134 as so stated. They are violating the Code of Criminal Justice. Why are commanders who have asked for all responsibility to deal with sexual assault and these behaviors for the 5 years this committee has been focused on this issue—you have demanded that you maintain control of all these issues. But where is the accountability for failure? Who is being held accountable for doing nothing since 2013? Who? Which commander?

I am very concerned that this is part of a culture that is resulting in the high levels of sexual assault. We know from the fiscal year 2014 SAPRO report that 60 percent of men and 58 percent of women who experienced sexual harassment or gender discrimination in the previous year throughout all the Services indicated that a supervisor or unit leader was one of the people engaged in the violations. That is a problem with our command.

So if you are dedicated to fixing the culture of the marines and all the Services, what do you plan to do to hold commanders responsible who fail to get this done?

General NELLER. Senator, I understand and share your concern. If I were aware or I would expect that any commander who was aware of someone who has reported any allegation of anything, but particularly something as serious as sexual assault, and the chain of command did not do anything, that that commander would be held accountable.

I do not have any statistics for you on that. I can tell you that of all those individuals who have come forward with allegations of sexual assault, what has happened to individuals that the charges ended up with some sort of process and ended up with an adjudication, but those are just numbers.

As you clearly and rightfully state, this is a problem with our culture. I mean, I do not have a good answer for you. I am not going to sit here and duck around this thing. I am not. I am responsible. I am the Commandant. I own this. You know, you have heard it before, but we are going to have to change how we see ourselves and how we treat each other. That is a lame answer, but ma'am, that is the best I can tell you right now. We have got to change and that is on me.

Senator GILLIBRAND. My time has expired.

Chairman MCCAIN. Senator Cotton?

Senator COTTON. I was very disappointed and troubled to read this news recently, as were all Members of this committee and most Americans no doubt. I am reassured by the comments of General Neller and the Sergeant Major this morning about how seriously they take it and the gravity with which they treat it.

General Neller, you mentioned that there are 30,000 members of this group. You do not have the breakdown of Active versus Reserve versus retired. Any indication yet of the breakdown between marines, NCOs [non-commissioned officers], and officers?

General NELLER. Not in specific numbers. I think we are going to get that information, Senator. I am not going to speculate on

what the level of officer involvement is or is not. But I think the NCIS folks can tell you that. I do not know the number. I would be speculating. I would not say this is—it is highly unlikely this is just enlisted. It does not really matter.

I would just remind, not to stick up for Marines United, but the great majority of people that went to this site—and there are other sites. We find sites all the time. We are looking out there and NCIS is looking, and people are telling us about other sites. So Marines United is not alone in this despicable, disgusting behavior.

But I think eventually we will know the breakdown, not just who was a member of Marines United but who went to this other link and participated in this behavior.

Mr. STACKLEY. Sir, if I could add.

Senator COTTON. Yes, Mr. Stackley.

Mr. STACKLEY. To date, we are dealing with cooperative information. In other words, we are trying to draw information—short of probable cause in which we can seize the information, we are gaining it cooperatively. NCIS has opened up a tip line. They have received as of yesterday 53 calls on that tip line that is opening up other avenues to help to identify individuals but also to identify these other sites that the Commandant has referred to.

In my opening statement, I called this a bell ringer. This is a bell ringer. We are not going to go back. We need to dive, plumb the depths of this issue to understand how far, how wide it is, and then working up and down the chain of command, whether you call it culture, whether you call it good order and discipline, get not just every marine, every man and woman in uniform to understand what our standards are, what is and is not acceptable on one hand and, on the other hand, prosecute these other avenues where this behavior is taking place to the extent of our ability. We are not going to go backwards.

Senator COTTON. We have spoken at this hearing this morning quite a bit so far about law and policy, and those are important questions. I want to speak about the expectations we have for the young men and women we have in uniform putting aside law and policy.

Back when I was a company grade officer and we had to do safety briefs every Friday afternoon to ensure that if our soldiers misbehaved on the weekend, we could tell our chain of command that we had ordered them not to do so. Rather than getting into every single detail that soldiers might do over the weekend, I would simply say obey your general orders and the law and be a good soldier, a good citizen, and a good man. I assume that your company grade officers and company grade NCOs do something similar on weekends or before passes.

Putting aside the requirements of law and policy, General Neller, do you believe every marine should know that this kind of conduct violates the spirit and the ethic of the Corps?

General NELLER. Senator, you would think, after all the discussion and all the training and things that we have done, that people would understand that this type of behavior was unacceptable. But apparently whatever we have done or tried to do has not worked or we have not been clear or people think that they can go on social media with some persona or avatar character. But as Senator Gilli-

brand rightfully stated, I mean, some people use their full name and their unit, and because they participate, the frustration is what is a crime and what is not as opposed to boorish, stupid behavior. This is beyond that. So that is where we are in working through that right now.

Yes. I believe even if they do not, they should now. I am going down Camp Lejeune tomorrow. I am going to talk to people and make sure they try to make this as crystal clear as I possibly can.

Senator COTTON. Sergeant Major, if I could just ask you one question.

Chairman MCCAIN. Your time has expired.

Senator Blumenthal?

Senator BLUMENTHAL. Thank you, Mr. Chairman.

You used the words, Commandant Neller, "despicable and disgusting." That certainly is a feeling that everybody on this panel shares with you. I think also many of us share the passion and impatience that Senator Gillibrand expressed very powerfully because there have been instances in the past, and your acknowledgement that perhaps the past violations of trust and law have not been addressed sufficiently aggressively may give us some comfort here. But I think we are all going to watch closely and demand from you not just the words that you have given us, which we trust, but also action which speaks louder than words.

Do you know personally of any commanders who had knowledge of this site before it was disclosed?

General NELLER. No, Senator, I do not.

Senator BLUMENTHAL. Do you believe that the same kind of aggressive discipline should be focused on the chain of command, as well as on the perpetrators who were involved in the immediate conduct, if they had knowledge?

General NELLER. I do.

Senator BLUMENTHAL. Will you assure us that you will take aggressive action against them?

General NELLER. I do.

Senator BLUMENTHAL. You mentioned earlier that you thought that nonjudicial punishment was appropriate for the marines who may have been involved or at least many of them. Would you agree that the Uniform Code of Military Justice should be applied as aggressively as possible in these instances and that violation should be prosecuted to the full extent of penalties that can be achieved?

General NELLER. Let me clarify my comment. When I said nonjudicial punishment has applicability, it does, but whether that is the level at which these allegations are adjudicated is up to the chain of command. All I was trying to imply is that that is a tool available to commanders. If the act is more egregious, then there would be other venues, more serious venues available to commanders.

Senator BLUMENTHAL. Would you agree that the chain of command may be unable to prosecute as aggressively as possible if in fact there are allegations within the chain of command that ought to be pursued?

General NELLER. I do not think that should make a difference. I mean, it might cause a commander if someone or their subordi-

nates was complicit in this, but a violation is a violation. We are all accountable.

Senator BLUMENTHAL. But that might make it more difficult for someone to take action against a fellow marine who was within the chain of command. Would there be some process even now under existing law? We have sought to reform or change it to make sure that there is accountability.

General NELLER. We select our commanders based on their skill and their ability and their potential to command. They have got to make the hard decisions. And so if that involves—we have all done it. If that involves disciplining somebody that is in our own chain of command or that you know, them that is what you do.

Senator BLUMENTHAL. Two articles of the Uniform Code of Military Justice have been mentioned, 120 and 134. Neither specifically prohibit cyber bullying. My thought has been that perhaps there ought to be a specific provision that is applicable to the conduct involved here which, in effect, is a form of cyber bullying. Would you support such a provision?

General NELLER. We have had discussions about whether or not the UCMJ has the ability to address this. To me, we have stated what behavior in cyberspace is acceptable, not acceptable. To me that has the weight of an article 92 disobedience of an order. So 120(c) addresses specifically taking someone's picture without their permission and using it and 134 would address good order and discipline and those things. So I believe the tools are there if that is the level of punishment or administrative action you wanted to go to if the facts support that.

But I think there may be some discussion about—I think that is something that we are going to get into with this task force whether there are provisions within the UCMJ that may need to be more specific about this particular type of potential offense because this is not new, but there have got to be some tools for commanders to be able to address this specifically.

Mr. STACKLEY. Senator, if I could add. On cyber bullying, we hypothetically are talking about ways we could prosecute it through the UCMJ, but it has not been tested yet. Your question regarding is there value in getting into greater detailed specifics within a specific article, I think the task force which the Commandant has launched, I think that is central to one of the areas that they are, in fact, looking at. We need to keep it on the plate, and we need to come back to you with specific recommendations.

Chairman MCCAIN. Senator Ernst?

Senator ERNST. Thank you, Mr. Chair.

Those who participated in these disgusting and horrible actions have not only failed our Marine Corps, they have failed the men and women who wish to join your ranks and they have failed our country. I am not as eloquent as some of the other members on this panel. All I can do is express to you how disappointed I am. I am very disappointed.

General Neller, I hope that you can convey the concerns you have delivered to this committee today directly to your marines, not through a press conference, not through your designees, but directly to as many marines as you possibly can. Implementing

change to this type of behavior begins at the ground level, and you are a leader, sir.

As reports continue to come in across the DOD [Department of Defense], it is clear that this seems to be Service-wide. This is Service-wide. We need a Service-wide approach to addressing this issue. This is a cultural problem not just in our military but society at large. Hearing that many individuals were not surprised about these reports disappoints me. Hearing that there may not be a way to hold many of the people that were involved in this accountable—that angers me.

Illegal or not, members of our community need to know this type of activity creates a culture that leads to sexual assault. Those that sat complacently by as this unfolded from the NCOs to the officers are all contributing to this issue. There is no excuse, and you have stated that, General Neller. I appreciate that greatly. There is absolutely no excuse for this, especially for those who wear our Nation's uniform.

The steps that you now take moving forward following this event will define each of us before this committee. Regardless of what legal or administrative action you are able to take, I hope this leads to you personally sitting down and you, Sergeant Major, as well and educating our marines.

A social media handbook has been discussed by a number of folks here on the panel, but how many marines actually read that? How many sit down and read it? It is up to all of us to educate our marines.

The Marine Corps has a high turnover rate. We have thousands of marines coming through every year, and we have to make all of them aware of what they represent. They need to know that the actions they take here at home and online can take away from the success of their brothers and their sisters in arms.

This is absolutely an issue that impacts our entire society. It is an absolutely horrible issue impacting us, but it is one that we must stop. I say we. It is not just the Marine Corps. It is those of us who are sitting here today.

We will be evaluating how to give you the right tools, the necessary tools to combat this issue, and absolutely you must hold those marines accountable.

In the meantime, I hope that you will continue to evaluate what we need to do to combat this issue, not just in the Marine Corps but Service-wide, and what we need to do to impact society at large.

Thank you, Mr. Chair.

Chairman MCCAIN. Senator Donnelly?

Senator DONNELLY. Thank you, Mr. Chairman.

The marines who did this have betrayed their fellow marines, and these women marines stood up and said they would put their lives on the line for this country and give them up, if necessary. This is the treatment that they got in return.

But they have also betrayed those marines who fought in Anbar Province and Helmund Province, in the Gulf, in Vietnam and Korea and Guadalcanal, Iwo Jima who built the Corps inch by inch, step by step. These marines who have done this have disgraced themselves, but they also let down the Corps and all of

those other marines who fought for our country to help create the Corps.

I went online and found that there is already a Marines United 2.0 posting links to the same materials, that already has over 3,000 members. What can be done about this, and what does that say? General?

General NELLER. Sir, if the Marines United 2.0 is there for their original mandate to help veterans, that is fine. But if there is a link that takes anybody who can get access to a similar page where there are posted pictures of anybody, but more likely female marines, and when they are making commentary, we will go like we did before, and we will ask the provider to take it down. But that is where we find ourselves.

Now, whether we can get the information or make them hold that data for us—you know, we have recently in this investigation with Marines United—NCIS recently got some more information, so that should allow us to get to that.

But, again, we are addressing the symptom here. The problem is that anybody would even want to do this in the first place. That is the part—this does not make any sense to me. Okay, they are doing it. Why? What is it that makes anyone feel that they are going to make themselves feel better by being degrading about any individual, whether it be based on their gender or their race or their sexual preference? If they are, indeed, a marine or anybody—it does not matter—that is not who we are and what we do.

So our folks now and with NCIS's help—we are out there looking and we are finding other sites. We go through the legal process. They go to the provider and ask them to take it down. I think NCIS can give you more information in the closed session because there are other sites out there. Marines 2.0 is just one. Again, some of them are legit and they do good or proper things for veterans or anybody that belongs. Others not so much. Not at all.

Chairman MCCAIN. Senator Sullivan?

Senator DONNELLY. I would suggest, General, that they are also disrespecting you.

Chairman MCCAIN. The gentleman's time has expired.

Senator Sullivan?

Senator SULLIVAN. Mr. Chairman, I believe he had a minute and 23 seconds left.

Chairman MCCAIN. Please proceed.

Senator DONNELLY. Thank you, Mr. Chairman.

What I wanted to say is they are basically challenging you, General. They are thinking that they can get away with this. You are the Commandant of the Corps, and I think it is up to you—and I trust and believe you will tell them and show them that they are not bigger than the Corps, that they cannot treat their fellow marines like this.

How can women marines feel that the Corps has their back? When a young woman makes a decision that, number one, she wants to serve the country and put her life on the line for us, why will she choose the Marines? How do we reinstate that trust that we have her back?

General NELLER. The only way we can, Senator, is through our actions and show that anyone who sticks their hand up to support

and defend the Constitution of the United States and has the willingness to earn the title of marine is going to be a full-fledged member of the team like the two female marines sitting behind me here. We have got to make them believe it. We have got to earn. They do not just have to earn the title of marines. We have got to earn their belief that they are going to get the same opportunity as anybody else to compete and be the best person they can be. So I can sit here and say it. We have got to re-earn the trust and not just of them, this committee, and the American people. I understand that.

Senator DONNELLY. Thank you, Mr. Chairman.

Chairman MCCAIN. My apologies, Senator Donnelly, for cutting you off.

Senator DONNELLY. Do not worry, sir.

Chairman MCCAIN. Senator Sullivan?

Senator SULLIVAN. Thank you, Mr. Chairman.

I want to begin by thanking Senator Gillibrand for her calling for this hearing and her unfailing advocacy for women in the military.

Like you, General, I am a father of three daughters and also spent a lot of my civilian career focused on combating the problem that Senator Ernst mentioned is a problem not only in the military, but across the country of domestic violence and sexual assault. I think Senator Gillibrand's focus on this benefits the military and the country.

I also appreciate your and the Sergeant Major's opening statement to say you are going to take responsibility for this.

I think like everybody on this committee, General, when I first read the news about the marines attacking and degrading other marines—it was what Senator Donnelly just mentioned—I was outraged, disgusted, embarrassed as a citizen, as a lawmaker, and as a marine. I am here in this capacity as a United States Senator, but earning the title of marine is the proudest personal achievement of my life. It always has been, always will be.

You know, we talk about that there has been no more formidable fighting force in the world, but the Marine Corps in my view goes much deeper than that.

I mentioned a story. Last year, I was walking down the street on Capitol Hill. There was a mom and two young kids, a boy and a girl, walking by me, and a group of eight or nine marines in PT [physical training] gear coming up strong, formidable, and they passed this family, and this mom looked at her kids and said those are marines. They are courageous. They are fearless, and they will do anything to protect our country and keep us safe. That is what mothers in the country are telling their kids.

This goes way deeper than this. I believe that if the Marine Corps cannot prevent marines from attacking and degrading women marines, that the Marine Corps is going to lose what it means to the country, to the Marine Corps, to other marines.

So, General, you talked a lot about a perversion of the culture. What do you mean by that?

General NELLER. Well, Senator, like you I believe all marines have a belief that our motto, semper fidelis, our core values of honor, courage, and commitment are what we are, and that everything that we have seen in this Marines United event is not. Any-

body that is out there involved in this or any other site that are doing this—and as has been accurately pointed out, this is something that has been out there for some time. I do not know how they think they can reconcile the inner marine with this. I do not mentally see how you get from A to B.

Senator SULLIVAN. One of the things about the Marine Corps and all Military Services, but particularly in the Marine Corps, there is a culture and it is part of what we do is we bring violence to the enemies of our Nation, and we are good at bringing violence upon the enemies of our Nation. Is it the perversion of the culture where the marines are actually bringing violence upon women marines? Is that not the perversion? The culture, which every marine who is honorable thinks this is a disgusting perversion?

General NELLER. I believe that is a very accurate description, Senator. Thank you for that.

Senator SULLIVAN. Sergeant Major, can I ask you a question? You both have talked about boot camp and getting at this early. One of the things, as you know, that the Marine Corps does very well in boot camp is it focuses on the history of the Marine Corps. You walk out of boot camp, if you can make it, after 3 months, and you know about Chosin Reservoir. You know about Iwo Jima. You know about all those things and you take pride in it.

General, I thought your opening statement about referencing five marine women who were killed in action defending our Nation—do you think, Sergeant Major, that focusing on some of those issues with regard to our history in boot camp can start to set the culture on a more proper course to recognize that, hey, look at these. They are marines. Right? It does not matter if they are men or women. They died for their country. Could we do a better job of instilling that at the outset as we shape the outlook and minds and culture of these 18- and 20-year-old kids?

Sergeant Major GREEN. Absolutely, sir. The task force that the Commandant has put together, led by the Assistant Commandant of the Marine Corps—we met a few days ago, and that is exactly where we are starting. We are going beyond that and starting at the delayed entry program. We are looking at everything we teach marines, and we have to understand within ourselves, in a 4-year enlistment 120,000 marines would have gone in and out of the Marine Corps. 120,000. We would have turned over two-thirds of the Marine Corps in a 4-year period.

We need to step back after 15, 16 years of fighting and we are still in that fight and absolutely take a look at not only how we make marines from those who walk through the door and want to be something better themselves, but also how we retain marines and families with our ethos of honor, courage, and commitment.

We are going to seriously take a look at that because the processes that worked yesterday—they are not working today because there are other societal ills that come through the door with every individual that comes in, that the tools that we have are not being as effective as they need to be today. So we are going to take a look from the recruiting of our marines until the time they leave the gates and also beyond that as to veteran support organizations out there, to take a look at our motto, "once a marine, always a ma-

rine." Every marine that leaves out the door, tell them they are responsible for that eagle, globe, and anchor.

There are some bad actors that have worn the eagle, globe, and anchor. They are determined to keep these things going, and we know this for a fact. We've got to do better with our ethos and find the tools, the ways and convince those that come through the gates and those who, like you said earlier, are thinking about coming through the gates, the moms and dads who are talking to their kids.

I have a son at the Naval Academy. They left for spring break going to Orlando, and my wife is freaking. She is scared to death. I just sat down with the four boys in my basement and talked about this, talked about sexual assault, talked about the ethos of honor, courage, and commitment, the fact that one day they too are going to lead and they may lead in combat. But first they must lead back here in peacetime showing that they are worthy leaders and lead marines and sailors in combat.

I have a 14-year-old daughter. I would like to be proud if my daughter said she wanted to be a marine, just like my son. I have to assure her I will leave the footprint, along with the Commandant, that provides a way of safety for not only my kids but all kids, sir.

Senator SULLIVAN. Thank you.

Thank you, Mr. Chairman.

Senator REED [presiding]. On behalf of Chairman McCain, Senator Kaine, please.

Senator KAINE. Thank you, Mr. Chair, and thanks to the witnesses.

This is, obviously, a very serious hearing, important to have it. I am the father of a marine. I employ a lot of marines in my office. My State is a State where every marine officer is trained, every marine security guard is trained, a lot of other marines are trained and serve honorably. I think I just can say on behalf of an awful lot of Virginians, there was a moment when the story broke that a lot of people's hearts sunk. A lot of people's stomachs were turned.

This is absolutely critical to get right. You are completely aware of the work of this committee under the leadership of Senators Gillibrand, McCaskill, and others to tackle sexual assault in the military. It is still very much an open proposition on this committee because the question about whether sexual assault or other crimes should be treated within the Uniform Code of Military Justice or separately is something that we have resolved for now to try within the chain of command, but we are testing the evidence. We are looking at the data to determine if that was right or not. Many of us, if we conclude that we are not getting the results that we want, even those of us who have supported chain of command in the past, may conclude that it is just not sufficient.

It would be tragic for the Marine Corps if that decision were to be made because of a belief that the Marine Corps' bad example would cause us to make that decision for all branches or the Marine Corps' bad example would cause us to make a decision that would be with respect to one branch of the service and not the others. So that is the weight of this matter in a body that is still really

assessing whether the military, the Marine Corps, but the other branches have to tools that they need to tackle this problem.

The Marine Corps does a great job of setting people aside who do not meet physical fitness standards. The Marine Corps has done a very intense amount of work to get into the redefinition of military MOSs [Military Occupational Specialty Codes] to provide gender-neutral standards that people need to meet to serve in MOSs. If the Marine Corps attacks this problem with the same degree of attention and passion that they attack an issue like physical standards, then you are going to solve it.

But I think I speak for everybody up here out of a belief that we just have not seen that. We just have not seen that level.

General, I want to ask you something. I thought your opening statement was very good, but I did have one question about it. Could you get your written statement—because we do not have copies of it here—and just read the first couple sentences of it again to me? Because I have one question about what you said.

General NELLER. The beginning, sir?

Senator KAINE. Yes, just right at the very beginning.

General NELLER. Normally I appear before this committee to tell you about the extraordinary things your marines are doing at home and around the globe. But today is different. I am here today to discuss the details of some truly disturbing and unacceptable actions that have allegedly been committed on social media.

Senator KAINE. Stop right there. "That have allegedly been committed on social media." Are we talking about allegations here or are we talking about something that has happened? I mean, it might be an allegation as to who was involved, but this is not just an allegation about something that happened on social media. This is a fact. Is that not correct?

Senator REED. Senator, we are going to go into closed session. That might be a question that is most appropriate for a closed session.

Senator KAINE. But I just think it is important to really make this clear. We are not talking about any individual in this hearing, and we should not for the reason that you stated. But if in the public hearing, this is described as alleged behavior, that there were allegations of something on social media, I do not think we are treating it with the seriousness we need to. This is not allegations about social media. This stuff happened. The General's testimony that Marines United is not unique and Senator Donnelly's description of Marines United 2.0—I just think it is important that we not leave confusion with the public that we are here just talking about some allegations of something on social media. This happened. Now, who was involved—we are not going to get into that in an open session. But I would just put that to your attention going forward because we are talking about more than just allegations here.

Secretary Stackley, let me just ask you in closing. I have a hard time believing that this massive sharing of information about women in the Marines would just be limited to this branch. Talk to me about investigations into whether this is also going on in the other branches of the military.

Mr. STACKLEY. I cannot speak specifically for the other branches, but in the closed session, what I would recommend we discuss is

some of the information that NCIS is arriving at through their tip line and the number of websites that indicate similar activity on other websites. That is very important.

Senator KAINE. Then let me just ask it this way. Do you believe this activity is limited just to the Marine Corps?

Mr. STACKLEY. No, sir.

Senator KAINE. Thank you.

Senator REED. On behalf of Chairman McCain, Senator Tillis.

Mr. STACKLEY. But I do not want to let it stop right there. This is at the top of Secretary Mattis' priority list working across the service departments to get at this issue. This is not being managed as an isolated issue for the Marine Corps as regards the Department of Defense. We recognize vulnerabilities here and we need to prosecute those.

Senator REED. Senator Tillis, please.

Senator TILLIS. Thank you, Mr. Chair. I am going to try and be brief so that we can get to the closed session.

But I did want to get a clarification on the Marines United, really the structure of what we are talking about here because I think it is important and we can get into numbers later. But we are talking about 20,000 or 30,000 marines involved in a social media network, much of which is not the subject of the actions that we need to get to the bottom of.

Can you give me some rough idea of the sub-page where the illicit activities were occurring, what that is as a percentage of the total people engaged in what would otherwise be positive social media interaction?

General NELLER. We believe there are about 30,000 total members of the page. How many Active, how many former, how many Reserve, how many other services——

Senator TILLIS. But in that page——

General NELLER. But in the link to take you to the separate drive, I have been told that the numbers were about 500.

Senator TILLIS. That is the important point because I think a lot of people think that there are some 30,000 marines engaged in this activity. The number is whatever it is, but it is a subset and what we think is a minor subset of the total page. I think that is very important.

General NELLER. I would understand and appreciate your comment, Senator, but it does not matter if there is one.

Senator TILLIS. I get it.

Now I want to get to the next. For those who are in the subset and involved in these activities, what is the maximum penalty and discipline that they can receive if they are found to have been engaged at any level in that sub-site? Can they be court martialed? Can they be imprisoned? Can they be fined? In other words, what discipline are these folks subject to right now based on the current rules?

General NELLER. I think that would depend on what their level of involvement was and what they were doing.

Senator TILLIS. Let us say for the worst of the worst, whatever that may be, just hypothetical. For the worst of the worst, what potential penalty could they receive from this?

Mr. STACKLEY. They could be court martialed, sir.

Senator TILLIS. What about a veteran, somebody who is no longer in Active service that is also engaged in this? I am assuming just based on the numbers of the Sergeant Major, there are going to be some of those involved. What consequence could they possibly suffer?

General NELLER. I think it depends on the State. Certain States have certain laws about this, and there are certain provisions about what is consent with the use of a picture.

Senator TILLIS. I would like to find out—you do not have to answer the question, but I want to look at other things that we need to do here to make this a very, very painful exercise for somebody caught guilty of doing this. As a member of the Veterans Committee, if there is something that we could do to disallow their benefits for bad behavior after they are discharged, those are the sorts of things that we have to do. A part of what you need to do is change the culture, and I believe that you will, General Neller. I think that we need to work on that, but we also need to make it a very frightening proposition for people going forward to be captured into this sort of activity.

So I would like to get people to report back to me as a member of the Veterans Committee, as the chair of the Personnel Subcommittee, what more do we need to do to make this a very frightening proposition for somebody to get tempted into doing going forward so that you do not have to focus on these sorts of things. I want you to train marines to be able to be safe and lethal on the battlefield, not doing these sorts of things. I think we need to work to make it very clear that this is going to produce dire consequences for people stupid enough to do these kind of things going forward.

Thank you, Mr. Chair.

Chairman MCCAIN [presiding]. Senator King?

Senator KING. Thank you, Mr. Chairman.

I have gone from anger and disappointment to really sadness. This is a sad day for the Marine Corps and for our Armed Services.

What bothers me, General Neller, is that I am convinced that all of us human beings have the capacity to be good or evil. How that comes out in any given situation, particularly in a group situation, depends almost entirely on how we are led.

One of the things that bothers me is there was a quote in the press last week from the reporter and the former marine who really broke this story that not once on this website or on Marines United 2.0 did he see anybody say this is not what we are going to do. This is wrong. This is improper. This is disrespectful. Not once.

That speaks to me of a culture that goes all the way down. You can have proclamations and issue letters and everything else, but if you have got lower ranking officers and non-commissioned officers who are winking and laughing and they deliver the statement with a little grin, that undermines the whole thing. This is an indication to me of a serious cultural problem that goes beyond the specifics of orders. Do you understand what I am suggesting?

General NELLER. Senator, I understand perfectly what you are suggesting, and I agree. You know, being a bystander for any sort of an offense is something that we struggle with. I was told once

by a senior officer that the Marine Corps is built on discipline and it is a rock. It is the foundation of our house. Every time you walk by something you know is wrong, it is the equivalent of taking a hammer and hitting that rock and putting a chip in it. If enough people walk by, pretty soon that thing is going to crack. So we may be at that point.

I think marines in their mind—they somehow separate what they do during operational things, what they do in training, and what they do when they are not out there actively engaged. They think that the social media, the Net gives them anonymity to do this type of thing. They are ignorant as to the impact. That is what I have got to make everybody understand. No, it does not work that way.

But this is your Marine Corps and——

Senator KING. Beyond this posting and being dumb about what they put online is the underlying—these guys apparently did not feel that they were doing anything wrong. They were on this website with 30,000 people on it, and they were posting it and nobody said, this is not appropriate or, gee, fellows, do you think this is a good idea That indicates to me that they felt empowered or enabled to do this.

So it is really not a question of issuing orders. It is issuing orders that are credible that go all the way down the line in terms of not only saying the right thing but meaning it and conveying it.

General NELLER. Mr. Brennan, the individual that broke the story—he said it. I think we are finding and we are going to find that there are more that are going to come out and say what should have been said before. You know, there are a number of people out there that have the ear of whatever this group is.

Senator KING. By the way, you know that they are mocking you and the leadership——

General NELLER. I understand that.

Senator KING.—on this MU [Marines United] 2.0 and they are saying, come and get us, NCIS. They are continuing to post pictures as recently as this past weekend. I mean, they are not getting the word here.

General NELLER. Well, then we will have to get the word to them.

Senator KING. Let me just follow up with one quick question to what Mr. Tillis asked, and perhaps this is for the closed session. I think one of the real problems here is what is the jurisdiction, what is the accountability for a former marine. Under the military code, there are consequences for people who are in the Marines now, but if they are out—again, one of the things I have read is a guy posted his discharge papers and said, try to come and get me, NCIS. So that is a separate question.

Mr. Stackley, can you respond in open session on that, or is this going to be a matter of State law?

Mr. STACKLEY. Today it is a matter of State law. The first thing I tried to dive into is what is legal versus what is not legal, and then what is acceptable versus what is not acceptable. There are a number of behaviors here that are absolutely unacceptable and yet they are legal. Within the Services, we have the ability to draw that line in terms of something that is not acceptable, we are going

to prosecute. Outside of the Service, where it is legal and unacceptable, we are limited in our ability to prosecute. So I welcome Senator Sullivan's comments—or I am sorry—Senator Tillis' comments regarding added authorities that we might want to look into that give us the ability to go outside of uniformed services for everybody to understand, you served in our country, you left the uniform behind, you remain accountable to the Code that we hold those still in uniform to behave to.

Senator KING. Thank you.

Thank you, Mr. Chairman.

Chairman MCCAIN. Senator Graham?

Senator GRAHAM. Thank you.

Did someone actually put their discharge online and say, come get me? Did they actually do that? Who is that person? Do we know their name?

Senator KING. I will give you the citation.

Senator GRAHAM. Well, let us make them famous right here. What is their name? We will get it later. We will publicly let the world know who this person is.

The website—I am a little confused now. I am not the best person to tell you about the Internet. That is for darned sure. But the 30,000 people who are viewing this—were most of them doing bad things, or were they just talking as marines, Mr. Secretary?

Mr. STACKLEY. The numbers that we are looking at right now is the majority of them were not involved in this activity.

Senator GRAHAM. So the posting of photos, you know, somebody took a photo of a young female marine—how many of the 30,000 went to that part of it?

Mr. STACKLEY. The number that we are carrying is about 500, but the investigation remains ongoing.

Senator GRAHAM. I am agreeing with the General. One is too many. But I am just trying to get my head around it. What was the purpose of this website?

Mr. STACKLEY. Marines United was initiated 5 or 6 years ago with good purposes in mind, and that was to support marines who were suffering from PTSD [post-traumatic stress disorder] and coming out of combat action.

Senator GRAHAM. So these websites started with a good purpose and some people have hijacked it basically. Is that right?

Mr. STACKLEY. Yes, sir.

Senator GRAHAM. Sergeant Major, you've got a 14-year-old daughter.

Sergeant Major GREEN. Yes, sir.

Senator GRAHAM. What would you tell someone who has a 14-year-old daughter that does not know as much about the Marines as you do about whether that daughter should join the Marines?

Sergeant Major GREEN. First of all, sir, I am ashamed of the actions of this website. We recruit marines, as I said before, 30,000 a year. I can assure that parent, mother or father, that the chain of command in the Marine Corps, the leadership—we are going to do everything we can——

Senator GRAHAM. Would you tell those parents to send their daughter to the Marines given what we know today?

Sergeant Major GREEN. Yes, sir. I can assure them that myself, the Commandant, and the leadership—we are going to pave a way that is respectful——

Senator GRAHAM. What would you say to that young woman, General, who is thinking about joining the Marines?

General NELLER. I could understand why they would have some questions.

Senator GRAHAM. Do you not think this has kind of stepped all over recruiting of young women?

General NELLER. Senator, we are talking to our recruiting folks because the irony of all this is we are trying to increase the number of women in the Marine Corps.

Senator GRAHAM. Right.

General NELLER. This certainly, I would say, is not helpful.

Senator GRAHAM. I would say this is devastatingly bad.

Would you agree with me that this is one of the darkest chapters in the history of the Marine Corps, even though there are maybe 500 people involved?

General NELLER. We have not distinguished ourselves in this affair.

Senator GRAHAM. Having said that, you are the finest fighting force in the history of the world, pound for pound, the United States Marine Corps. You have an honored tradition, but every organization has dark moments.

Do you agree with me this is one of the darkest moments and it needs to be fixed?

General NELLER. Yes, Senator.

Senator GRAHAM. There are two ways to get people to do better. Appeal to their better nature. Sergeant Major Green, do you agree with that?

Sergeant Major GREEN. Absolutely, sir.

Senator GRAHAM. And scare the hell out of them.

Sergeant Major GREEN. Yes, sir.

Senator GRAHAM. General, do you believe that people are sufficiently afraid of degrading their fellow female marines as of this moment?

General NELLER. Based on their actions, no. No, Senator.

Senator GRAHAM. Will you promise me that there will be a lot of fear coming?

General NELLER. We will do all that we can to hold people accountable.

Senator GRAHAM. The Marine hymn says, first to fight for right and freedom and to keep our honor clean. Do you believe you need to fight to keep that honor clean?

General NELLER. Absolutely, Senator. We have to.

Senator GRAHAM. Are you committed to winning that fight?

General NELLER. I am.

Senator GRAHAM. Thank you.

Chairman MCCAIN. Senator Hirono?

Senator HIRONO. Thank you, Mr. Chairman.

I realize that so much of this kind of behavior has to do with some attitudes and culture, and it is very difficult, General Neller, to change the culture. So I am wondering whether one of the ways that we can deal with this issue is to provide some deterrence.

Would you agree that one of the ways that we could deter this kind of behavior is through court martial where appropriate?

General NELLER. Senator, I believe deterrence is part of this, and there has got to be accountability, whether it be a court martial or other processes. Yes.

Senator HIRONO. In terms of changing the culture, how would you begin to even change the culture? This has been longstanding not just in the Marines but issues that involve all of our Services. So how do you even begin to change the culture when, for example, you have a Commander in Chief who exhibits certain attitudes toward women? How do you change the culture?

General NELLER. The only way I know how we have done this in the past when we have dealt with other issues—I mean, there are always going to be those that are going to not be able to adjust, and that will be addressed. But I believe that most marines join the Marine Corps to improve themselves, that they are good and decent people, and they have got to understand that there are certain behaviors that we expect and that we recognize positively and there are others that we do not. Part of that is having a discussion. It has got to start at the beginning when they first see their recruiter, and it has to be modeled throughout the organization. There are, obviously, those either who are not modeling the culture that we want or they are even condoning it.

So as the Sergeant Major said, we are going to go back, take a look where it starts. For all marines, it starts at recruit training or it starts at officer candidate school. We are going to look at how we talk about this, make sure they understand it. But as you say, at some point there has to be deterrence because—I would like to say we would be 100 percent successful, but we probably will not. So for those that are not able to comply, there has to be deterrence.

Senator HIRONO. So I am assuming that you will take every step necessary to identify whether certain codes of behavior were violated and then to pursue court martials, that you will do that very, very strenuously.

General NELLER. Yes, Senator.

Senator HIRONO. I would say another aspect of all of this is that what kind of message are you giving to the current female marines? I do not know how many women there are in the Marines, but have you brought everyone together in a way that the message gets to not just individuals who are undergoing training or during the recruitment process, but the current situation with all of your women marines? Have you had any kind of a gathering of the marines, both male and female, to talk about how this is totally unacceptable?

General NELLER. Senator, the only way I can address 185,000 marines or right today about 184,000—and there are about 15,000 women marines. About 1,500 of them are officers. 13,500 are enlisted—is for me to use our own platforms on social media to tell them what is going on and what they should expect from their leadership.

Senator HIRONO. Excuse me. Yes, that is you. But there are also your leaders on the bases. What are they doing to get the message across en masse?

General NELLER. We have spoken to all leadership last Friday. We issued instructions for them to go out and engage in this conversation. I am going to follow that up this week with even more direction. I am going down and the Sergeant Major and I are going down to Camp Lejeune to directly speak to marines in person. But it is going to take some work so that everybody gets down to the last marine. So we have a plan to speak both personally and using other venues or forums such as this hearing today to tell them what is going on and what they should expect and what is acceptable and what is not acceptable.

Senator HIRONO. So if I were to go to Kaneohe Marine Corps, for example, would there be a session that I could attend where this situation would be discussed?

General NELLER. There will be or there has been. I do not know exactly when commanders have scheduled this, but I can find that out for you, Senator, and when you are home and you want to participate, I would appreciate that.

Senator HIRONO. I will certainly check into that. Thank you very much.

Chairman MCCAIN. Senator Rounds?

Senator ROUNDS. Thank you, Mr. Chairman.

General, you and the Sergeant Major have both made it very clear that you have been disgusted with this activity. I believe you when you say that you want this ended.

At the same time, I am just wondering when you first heard about this and you were working your way through it, did it come to mind that this may very well be an outgrowth of the discrimination that we have seen in terms of men who may very well have thought that we just simply do not think this is the place for women in the military?

General NELLER. Senator, we talked about that, and I am sure there are going to be people that have that particular view. But okay. But I do not see how that gets you from that particular view to where you have to take a picture of somebody, post it online, and then mock, haze, harass, degrade, or even potentially assault them online. I mean, whether that is their motivation or not, I do not know. I have heard it described as the dark humor of veterans. That is a cop-out. But we also know that there are marines that are participating in this who never have been shot at in their lives. So they are just trying to get credibility. I do not know.

It really does not matter what their motivation is to me. It is the behavior. Whatever made them think that they were going to do this or watch it and not report it, that is what we have got to get after.

Senator ROUNDS. The reality is that we cannot go to war without women anymore, can we?

General NELLER. No, Senator, we cannot.

Senator ROUNDS. There are 500 individuals that we believe have participated in the inappropriate activity on this particular website that has been brought to light. Do we know how many of the 500 would perhaps have been former members versus the number that are current members? Do we have the numbers there yet?

General NELLER. No, Senator, we do not. NCIS in the closed session—they may have more because they just got access to some more information, but right now we do not know.

Sergeant Major GREEN. Senator Rounds, sir, if I can say something about——

Senator ROUNDS. Yes, sir.

Sergeant GREEN.—that you just talked about.

One of the worst parts, besides the victim or the survivor, about this whole ordeal, if there are men in the Marine Corps that have served in the uniform or that feel that women are not supposed to be in the Marine Corps, they have absolutely captured a voice with this social media venue and denigrated women that are serving, that may want to serve, and those that have served. If we do not get this right, they can absolutely drive women out of the Marine Corps and give women a reason not to want to serve with us. That is why we must get at this because if there are men that exist in the Marine Corps outside that do not want women in the Marine Corps, this is absolutely a mouthpiece for them, and we would not allow them to have that voice.

Senator ROUNDS. So in order to address specifically the actions that have occurred here, we have to make certain that we have within your ability to discipline clear and appropriate guidelines within the Code that allow you to address the specific actions for people that are still in the military, but then we have also got to find a way to address the actions of those who were formerly in the military and who are no longer a part of it but who are still displaying this type of activity. Is that a fair statement? We have got to be able to break it down into those two?

Sergeant Major GREEN. Yes, sir, it is.

Senator ROUNDS. Thank you.

Thank you, Mr. Chairman.

Chairman MCCAIN. Senator Heinrich?

Senator HEINRICH. General Neller, would you agree that taking down a site is not going to solve this problem?

General NELLER. I would agree with that, Senator. It is only a symptom.

Senator HEINRICH. I think it is really important that we recognize that this is not a digital problem. It is not a social media problem. It is not Facebook's problem, that that is a whack-a-mole approach. We have tried it in the past. It does not work. This is a conduct problem. It is a criminal problem, and unfortunately it is a cultural problem.

You said in your opening testimony that it is your inclination to resist that description of cultural, but I think it is important to recognize that until we recognize that for what it is, this will not change.

Now, this pattern of social media groups posting pictures of female marines without consent—I have seen some pictures, screenshots glorifying horrible sexual violence. It has happened before. I got an article here from 2014. I will not share it with you because I do not want to share the marine's name. But she said, "I was freaked out. I would not even look at it at first. I have all of my social media set up so it is private. So I was really confused how in the world they got a photo of me. I was terrified of the com-

ments I was going to be receiving. Then subsequent comments were not only overtly sexual, but some threatened sexual violence."

So you have asked for the trust of female marines. You have asked for the trust of survivors. I just want to ask you given that this has happened again and again—it is pervasive in the social media environment in particular—what would you say to those female marines to demonstrate that Marine Corps leadership has earned that trust?

General NELLER. That is why I am asking them to trust me because my ability to sit there and say I have earned your trust—because we have not gotten after this. I acknowledge that. But I cannot get after it if they do not become part of the solution. I know that is a big ask because, as you rightfully mention, if they are out there within these venues, all the haters will be back there attacking them again tenfold. I think that is part of the problem. It is the worst part of retribution in cyber bullying that if you make a comment, that you end up getting shouted down or threatened or all the hate. I am sure you deal with that. I know I am going to deal with it. I have dealt with it. I am going to certainly deal with it after today.

Senator HEINRICH. A big part of that problem—and you mentioned this—is anonymity. Are Active Duty marines allowed to participate in social media in that space anonymously? Have you looked at that issue that maybe the rights of Active Duty marines in a social media environment might be different from just the general public?

General NELLER. This is where it gets difficult. I would ask that we get with the lawyers because I am not an attorney. But it becomes an issue of free speech, and as the Secretary said, what is criminal and what is not, what is consent to a picture and what is not consent to a picture. But there are individuals out there that put their name, their unit, and there has to be accountability for that. So that is what I am asking our women to help us with.

Senator HEINRICH. I would ask you to help us if there are specific changes to the UCMJ that you need to be able to address these sort of abusive behaviors. If there are specific statutory changes for people who have already been discharged, we need to know what those potential tools are that we need to help you get ahead of this problem.

Chairman MCCAIN. Senator Cruz?

Senator CRUZ. Thank you, Mr. Chairman.

Gentlemen, thank you for being here today.

This is a sad day for the Marine Corps, and it is a sad day for our Armed Forces. All of us on this committee are agreed that the conduct at issue here was despicable, that we owe a sacred trust to the women and men who join our volunteer military and put it all on the line to keep us safe. To find themselves abused and victimized by fellow marines is completely unacceptable.

I appreciate your addressing this issue with the seriousness that it deserves. My question to each of you is twofold. How do we ensure that this never happens again, and what needs to happen so that those who violated the rights of their fellow marines are held accountable? General?

General NELLER. Senator, to ensure that it does not happen again, we have got to change the way we see each other as marines. That is not going to be easy, but it has got to be done. I do not know how many people we are dealing with here. Some of them maybe they are just—whatever their beliefs are or they just happen to be piling on or they are just misguided or ignorant. But if they are in this organization, they cannot participate in this anymore.

I honestly believe that the leadership out there and particularly the sergeant majors and the senior enlisted and the NCOs—they are the ones that have their finger on the pulse of the organization. I have got great trust in marines. I have seen what they can do. I know their spirit. I may be wrong. I pray to God I am not. But I do not believe this is indicative of the great majority of the marines that wear this uniform. So they are going to solve this. I cannot do this myself. The Sergeant Major cannot do this. We have got to solve this together.

Now, for those that do not want to be part of that solution, then there has got to be accountability. We will work our way through this, but there are, as we discussed—we have got to clarify for our leadership what their actions can be if this behavior is identified and what they can do to hold these people accountable. We are looking at a whole number of things in addition to what is in the UCMJ. So that is our path forward.

So we have got a training piece. It starts at the beginning, but it is really a leadership piece, a discussion piece, but then at the end there has to be accountability because, as Senator Graham said, there are those—they understand what is right and what is wrong, and there are others—they understand it, but they may feel like they have to do this. Then they are the ones that are going to have to be deterred and held accountable.

Senator CRUZ. Sergeant Major?

Sergeant Major GREEN. Yes, sir. Sir, we have to build an environment. You know, if a marine walked into anyplace, the Salvation Army, the Red Cross, and they already have an idea of what that organization does, they walk in there and they realize that where they are going—the door that they walked through—they are not really doing what my thought was when I went in or what they advertise, then in real life, if they are doing something illegal, if they are doing something to denigrate and disrespect people, I am going to report it.

We have to build that environment in our Marine Corps where they go in the social media world and to really understand the meaning of friend because when you hit the button and you give somebody the right as a friend, that is not the same meaning as in I meet someone. That is the reality of today in the virtual world. Just because you tag somebody as a friend, that does not mean you actually know that person, and that is not really your friend. Some people just learned that day, see people, tag them as a friend, let them in, not understanding in the social media world everything on your page you have just given the right to because they can screenshot it. They can do what they want, take it and do what they want. Understanding the laws that we have right now today

that protect an individual—we have to explain that to our marines, our leadership, and those that we recruit.

Senator CRUZ. Thank you.

Chairman MCCAIN. Senator Warren?

Senator WARREN. Thank you, Mr. Chairman.

So we are here today to discuss marines using social media to share intimate photographs of female servicemembers and veterans without their consent. It seems like every time we shut down one of these websites that a new one pops up.

General Neller, I appreciated your strongly worded message last week, but we have already seen that at least one new website seems to have appeared in defiance of your guidance. We can keep playing digital whack-a-mole, but we will keep losing until we have better tools to prosecute those who are responsible.

So I want to go back to a question about the Uniform Code of Military Justice, but I want to ask it from a different perspective. General Neller, it is my understanding that if the original photo was taken consensually, the UCMJ may not allow for the strictest penalties under article 120(c) even if it was subsequently shared without consent. Is that accurate?

General NELLER. Senator, my understanding is, as the Sergeant Major was discussing, if you are on a public facing webpage and you post a picture, that in itself can be construed as consent, and if someone else takes that picture, that there is no criminal action. I am not saying I agree with that, but that is an interpretation.

Senator WARREN. So let me ask this question. Many States have implemented laws that make so-called revenge pornography a criminal offense. Do you believe that we need a change like that to the UCMJ?

General NELLER. I think that would be helpful in the accountability process. Some of these pictures of these women where they were fully clothed—and it is the commentary and all that stuff.

Senator WARREN. I understand.

General NELLER. But, yes, I do agree.

Senator WARREN. But are photographs that were taken consensually and then someone else posted them or they were posted in a different context and then forwarded——

General NELLER. That is correct.

Senator WARREN. I know you are committed to pursuing this, but if we are going to shut down this conduct, then you ought to have every possible legal tool at your disposal.

Now, I want to ask you a second question about this. Every Marine Corps base maintains a list of places that are off limits for servicemembers. In 2013, one of your predecessors, General Amos, told Congress that the Marines were examining whether you could legally make certain websites off limits in the same way. You cannot visit there any more than you can go into town and visit these particular places.

What was the result of that assessment? Do you need additional authorities to be able to do that?

General NELLER. Senator, I am not aware—I will take that for the record, and maybe my SJA [Staff Judge Advocate] can talk to you about that. But I am not aware that we ever, because of right of free speech and other things, placed a website off limits. On a

government computer, we block certain websites, but when someone is on their individual device, I am not aware that we have said the following websites are off limits and to frequent these sites, if we were even able to determine if the marine had, that you would be in violation of a lawful order.

Senator WARREN. I think this may be something that may be worth exploring again so that you have the maximum number of tools available to you to stop this behavior.

I have one more that I want to ask, and that is, General Neller, you are not the first Commandant to attempt to address this issue, and in all due respect, it does not seem to be working. I think it is because the social media scandals are symptoms of a much larger problem. It happens in the barracks and it happens in the field, and it starts as early as basic training. Are you willing to reconsider the role that Marine recruit training plays in this and reevaluating the Marine Corps' policy of gender segregation at basic training?

General NELLER. Senator, we are taking a very long look at how we do recruit training right now. I would not couch our recruit training as segregated, and I would, at this time, invite you down to see how we do what we do.

Senator WARREN. We are not separating men and women anymore in the Marines?

General NELLER. All recruits in all the Services live separately because they live in an open squad base. Our training is done by platoons, men and women in platoons. A good portion of their training, as we do it now at Parris Island where all our women get trained, they do things with male recruits, the swim tank, the rifle range, the crucible, the field training, even now their final fitness exams. So to say that we are segregated I do not believe is a fair statement, but we do do it differently than everybody else.

That said, we are looking——

Senator WARREN. Can I just clarify, General? Because I just want to make sure I understand, and I am past my time here, but I want to make sure I understand. Are you saying no activities are segregated other than sleeping, or are you saying that some activities are segregated and some are not?

General NELLER. Some are and some are not.

Senator WARREN. The question I am asking is whether you want to take another look at that.

General NELLER. We are looking at the entire way that we do recruit training, from how we educate and train our drill instructors to how we do the entire program of instruction for men and women.

Senator WARREN. Thank you, General.

Servicemembers who disrespect their fellow servicemembers dishonor the Service and dishonor our Nation. We have got to put an end to this conduct so none of us is here again. Thank you.

Chairman MCCAIN. Senator McCaskill?

Senator MCCASKILL. General, I think there are two issues I want to talk about during my brief time here.

The first one is I want to make sure that you all respond to the point that has been made previously, but the idea that this had to be discovered by a journalist and not discovered by you. There is a fundamental flaw in oversight in terms of good order and dis-

cipline and conduct unbecoming if we are not ferreting out this kind of ugly, ugly representation of the Marine ethos without journalists having to do it.

So I will look forward to a plan. I am going to ask my colleagues to join me in a letter to Secretary Mattis because I think this is something that needs to be done in all the Services. What are you all doing internally to monitor online conduct that is related to Active servicemembers, and how are you addressing that in terms of not just the vitriol that was on these sites, but also cyber bullying that could be impacting morale? I want to get to the bottom of that.

The second one is accountability. Now, I am going to tell you a brief story, and that is when I was a prosecutor in Kansas City, I wanted to do more on domestic violence. The detectives came to me and they said, well, Senator—I was not a Senator then—prosecutor, you need to understand that many times the victim does not want to cooperate, and if we do not have a victim, we cannot prosecute. I said, well, let us shut down the homicide unit then because we do not have victims in homicide and we figure out a way to make the case.

I bring that up because for 134 and 133, conduct unbecoming and good order and discipline, it does not matter if the victims cooperate. If you can prove that this was an Active marine and they went online and said these things and referred to fellow marines in this manner, then I mean, the prosecutor in me tells me you have got a prima facie case. I know you cannot comment on that because of undue influence, but I just want to point out that it is very important to understand that accountability is possible here even if the survivors are not interested in coming forward to be, quote/unquote, part of the case. Could you acknowledge that, General?

General NELLER. Senator, I understand your point. Again, no excuse, but it would require us to be out there—I mean, we surveil our network for people that are passing information. We look for malware. We do a lot of things. That is why Major General Reynolds behind me—she is our MARFORCYBER [United States Marine Corps Forces Cyber] commander. Our ability to look at all these potential websites where there is this kind of nefarious, disgusting behavior—I mean, it goes to the point where there is a certain—where is the right of the marine to express free speech and where does it go into an illegal act.

Senator MCCASKILL. Well, I get that.

General NELLER. And so our ability to monitor that. So we are having that discussion now, and I take your point.

Senator MCCASKILL. I think it is really important, and we can talk about this in closed session more. It is not something that has to be in closed session, but NCIS is the one that I want to talk to about it.

We have detectives all over this Nation that are posing as bad guys online to catch horrible people that are trafficking children and doing other illegal activities. It would not be hard for someone to pose as an Active marine looking for a spot where they can see what these guys obviously were interested in looking at. This is something that you could do on a random basis. Once it is known that that is out there, it is amazing the deterrent effect that that would have in terms of this being seen as acceptable.

I also want to say that I think this accountability piece—you know, there are crimes you can deter and there are crimes you cannot deter. I guarantee you, you throw some marines out of the Marine Corps, you say you are no longer welcome here and you are dishonorably discharged for this behavior, you do that in a high profile way—and obviously, I do not want you to comment because I do not want to get into undue influence territory. But let me just say for the record if you go after the Active marines that you have evidence on and if they are dishonorably discharged, that will begin to send a signal that many of us up here are desperate for you to send.

Then I would close, Mr. Chairman, just by pointing out that there has been some progress made. The 2014 SAPRO [Sexual Assault Prevention and Response Office] survey was cited by Senator Gillibrand. I do want to say that in 2015—I want to say this for all the survivors out there—77 percent of the survivors that were surveyed in 2015 recommended that other survivors come forward. So that is a positive that we are having that increase in numbers of survivors advising other survivors to come forward. I wanted to get that publicly on the record today so survivors out there in this incident hear that those who are coming forward who now have services and support available to them can expect a more positive experience as we all try to hold these jerks accountable. And "jerk" is a kind word.

Thank you, Mr. Chairman.

Chairman MCCAIN. Senator McCaskill has her usual reticence. I thank you for your passion. I thank you for your involvement in this issue for many years. Many of us do appreciate your commitment, Senator McCaskill. Thank you.

Senator Peters?

Senator PETERS. Thank you, Mr. Chairman.

I have to agree with my colleagues up here that today is, indeed, a very sad day for the Marine Corps and for our Services. Without question, disgusting, absolutely reprehensible behavior that needs to be aggressively dealt with, and it has to be dealt with immediately. I know, General Neller, you know the entire country is watching today. Although I appreciate your strong words, I know that you know that we also need strong action, that words will not be enough. We are going to need to immediately take action. In my experience with you, I know that that is the type of leader you are, and we will be working with you in any way that we can to be helpful to you.

My colleagues have made some very important points regarding the culture in the Marine Corps. I want to build on that and specifically talk a little bit about recruit training, which has been brought up, particularly though at Parris Island. As all of the witnesses here know, Marine Corps recruits from the eastern half of the United States, including my State of Michigan, as well as all female recruits attend basic training at Parris Island in South Carolina. Without question, basic training is the place where the Marine Corps instills its core values. A marine is always a marine. So those are values that stay with that individual for their entire life.

Last year, the Marine Corps completed three command-level investigations into hazing and abuse of recruits and even hazing among drill instructors at Parris Island. Allegations include the targeted hazing of recruits for their ethnic background or religious beliefs, including a Muslim recruit who was placed in an industrial clothes dryer multiple times.

A separate Muslim recruit from my State of Michigan died at Parris Island by jumping over a stairwell after enduring abuse by the marines entrusted to train him. The command investigation into the recruit's death found that, quote, maltreatment by his drill instructor team, leadership failures at multiple levels of command, and administrative and process failures contributed to his death. The investigation also found a senior drill instructor at Parris Island taught subordinate drill instructors to, quote, hate recruits—end of quote—in order to train them.

I am very concerned that the poor practices in the training of Marine recruits at Parris Island as a result of some of these instances may have contributed to some of the inexcusable behavior that we are discussing today. As you know, General Neller, respect is a fundamental core value, respect for every aspect of that individual.

So I know you have referenced a comprehensive review of recruit training, but could you let the panel know what will the scope of this review be, how it will be conducted, and has it already resulted in some corrective actions in recruit training at Parris Island?

General NELLER. Well, Senator, after the investigation, we sat down and went through and looked at what was going on at recruit training. What we found was that we had rules and regulations, but there was a failure in leadership and in supervision. So we have done a number of things to clarify what the rules were, what they were not. We have increased the supervision at the recruit depots and by increasing the numbers of officers. We have gone back to look at how we train our drill instructors.

There were some practices that had crept in over time that were not in compliance with the orders. There were a number of officers, to include a battalion and regimental commander, who were relieved due to their inability to maintain good order and discipline and follow the rules and regulations.

The individuals that you mentioned, plus others, are in the process of going through the Military Justice system. I will leave it at that. You probably will have read or hear about where they are within that process in the next few weeks.

So with this, I hate to say that this provided an opportunity, but again, to look back at, okay, so how does this—this just does not happen here. It starts somewhere. And so we are in the process, and we are already in the process of going back and talking to drill instructors about what it is to lead, what it is to coach, teach, mentor. We have got a number of things we are looking at, and we have already implemented as far as changing the attitude. The commanding generals that are there at both San Diego and Parris Island are all in with this. They understand what we are trying to do. I think they are making progress. But we have to prove that we have changed.

So I agree with you that part of this—part of what has to change at the recruit training and in officer candidate school is a discussion of how we view each other as marines, whatever our race, our gender, whatever, because that is where you learn what right looks like. And so we are in the middle of that. I believe we have a plan. It is not going to change overnight, but it is going to change. I am confident of that, and we will correct this. If there are others that do not want to follow the rules, they will be held accountable.

So I believe we are headed in the right direction there. But, again, you want to see results. I am responsible to give you those results, and it is not going to happen overnight. But, again, I would ask and invite you to come down and see what we do at Parris Island or San Diego and see some of your Michigan marines because I believe we are on the right path.

Senator PETERS. Thank you, General.

Chairman MCCAIN. Secretary Stackley, thank you for your appearance today and thank you for your input as we recognize the civilian stewardship of our military.

Sergeant Major Green, your leadership is probably now more necessary than most times in the past as we repair the damage that has been done and to put into proper perspective that this is a terrible thing. From time to time, these things have happened, but at the same time, we recognize the United States Marine Corps and their service and sacrifice that is going on today as we speak, and we do not want to ever diminish that service and sacrifice that they have made.

General Neller, you came before this committee with candor. We have now, I believe, embarked, thanks to your testimony and your commitment, on an effort that may take a long time. But I think this hearing was an important beginning to fixing a problem that apparently has been out there for some period of time. I believe you are facing it head on.

The one request I have from this committee is that you keep us informed not only of the progress that you make but in the challenges that you face because we are looking at a new form of communication amongst our citizens, and it is called the Internet. As I mentioned in my opening statement, it has provided knowledge and information in a way that has never been available before. There is also a dark side, and we are looking at the dark side today.

We are going to look forward to your and Secretary Stackley's recommendations if it is necessary to pass additional legislation. We cherish the right of all citizens to have a right of privacy, but I think when we are seeing this kind of outrageous and offensive behavior, then we need to provide some protection to our fellow citizens and those who have served our country with honor because when we do something like this, we harm the reputation of all. A few have done that and it is our obligation to try to see that this kind of thing is not repeated.

Senator Reed?

Senator REED. Mr. Chairman, I simply want to concur and thank you for holding this hearing. It has been very important, and it will be a foundation for further work by all the Military Services, not

just the Marine Corps, all the Military Services, and this Congress to get it right.

Chairman McCAIN. We will meet in 10 minutes in Russell 220 to continue this conversation in a classified setting. Thank you.

[Whereupon, at 1:23 p.m., the committee adjourned.]

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR JAMES M. INHOFE

MARINES UNITED

1. Senator INHOFE. General Neller, under the UCMJ, what actions do you see taken against those directly involved in the sharing of these photos and comments?

General NELLER. The Acting Secretary of the Navy signed ALNAV [All Navy] 021–17 on 18 April, which changed the U.S. Navy Regulations to include article 1168, prohibiting the non-consensual distribution of intimate images. This article makes punishable under the UCMJ conduct that might not otherwise be criminalized under other portions of the Code. In addition, on 9 May, I issued MARADMIN [Marine Administrative Message] 223/17, modifying the Marine Corps Separations and Retirement Manual to make administrative separation processing mandatory in the cases of marines determined to have wrongfully distributed an intimate image of another person. These substantial changes are being undertaken in addition to the many other legal tools available to implement discipline under the UCMJ in such cases.

2. Senator INHOFE. General Neller, what about those indirectly involved, such as those that are simply members of the group?

General NELLER. On 14 March, I released ALMAR [All Marine Corps] 008/17 which provides guidance for personnel who, in their personal capacity, desire to make unofficial posts on the internet regarding Marine Corps-related topics and guidance for marines concerning unofficial online activity that has an adverse effect on good order and discipline within, or brings discredit upon, the Armed Forces. Additionally, I published a White Letter on 21 March, "Social Media Guidance-Mandatory Counseling Requirement," which mandated, within 30 days, every Active Duty and Reserve Marine, officer and enlisted, receive a formal counseling confirming that they read and understand the updated social media guidance outlined in a message released to all marines on 14 March. Per article 1137 of the U.S. Navy Regulations, "[p]ersons in the naval service shall report as soon as possible to superior authority all offenses under the [UCMJ] which come under their observation, except when such persons are themselves already criminally involved in such offenses at the time such offenses first come under their observation."

3. Senator INHOFE. General Neller, are the Department of Defense and the other services working with you to identify other similar sites, possible involvement of their personnel, and how to eliminate this culture from the entire Department of Defense?

General Neller did not respond in time for printing. When received, answer will be retained in committee files.

4. Senator INHOFE. General Neller, do you need additional support from Congress such as additional authorities or legislation with regards to identifying additional sites, determining identities of those involved, holding those involved accountable, being able identify similar sites in the future, etc.?

General Neller did not respond in time for printing. When received, answer will be retained in committee files.

5. Senator INHOFE. General Neller, what is the Marine Corps doing to support all the victims, civilian and military, and their families?

General Neller did not respond in time for printing. When received, answer will be retained in committee files.

6. Senator INHOFE. General Neller, what can Congress and specifically this committee do to assist you in supporting the victims and their families?

General Neller did not respond in time for printing. When received, answer will be retained in committee files.

7. Senator INHOFE. General Neller, you have also asked for the victims to come forward, [QUOTE] "I'm going to ask them to trust us. I understand why that might be a bit of a reach for them right now. But I can't fix this ... The only way there is going to be accountability in this is somebody comes forward and tells us what happened to them." Do you believe the victims trust Marine Corps leadership and, if not, how do you regain their trust?

General Neller did not respond in time for printing. When received, answer will be retained in committee files.

8. Senator INHOFE. Mr. Traver, is Facebook assisting in the investigation?

Mr. TRAVER. Yes, NCIS has engaged with the Vice President of Security for Facebook and continues to work with Facebook in support of this investigation. Facebook has agreed to disclose account records in accordance with its terms of service as detailed in its operational guidelines for law enforcement officers seeking records. To date, Facebook has provided assistance to NCIS with data preservation and retention and availability.

9. Senator INHOFE. Mr. Traver, what capabilities does NCIS have regarding the cyber portion of the investigation?

Mr. TRAVER. The NCIS Cyber Operations Directorate employs an assortment of investigative tools to support investigations. In regards to Marines United and other similar social media platforms, NCIS Cyber Directorate uses many social media investigative tools, to include web-scraping software to collect and review data, workstations to review collected data, workstations to run social media tools to identify accounts and groups, and a server with a database to store the collected data. The database works to identify duplicates and potential useful meta data. Personnel supporting the cyber capabilities are special agents and computer specialists with specialized training and experience assigned to the NCIS Cyber Directorate and NCIS Cyber Operations Field Office. As with any criminal investigation, NCIS utilizes traditional investigative techniques and methods in conjunction with various cyber capabilities to ensure the most comprehensive approach to investigative fact-finding.

10. Senator INHOFE. General Neller, are you looking at policy changes, training changes, increased monitoring, ... all the above?

General Neller did not respond in time for printing. When received, answer will be retained in committee files.

QUESTIONS SUBMITTED BY SENATOR JACK REED

LEGAL ISSUES

11. Senator REED. Major General Ewers, it is clear that the Marine Corps has UCMJ jurisdiction over marines on Active Duty, and as well as over retired marines.

Does the Marine Corps have UCMJ authority over marines who (1) committed a criminal act on Active Duty, (2) were discharged before the criminal act was discovered, and (3) are still serving in a Reserve status, such as the Individual Ready Reserve? What if the marine is no longer serving in a Reserve status?

Major General EWERS. (1) Articles 2 and 3, UCMJ, permit the Marine Corps to prosecute current servicemembers and retirees, among others specifically enumerated, for an offense committed while on Active Duty or, in the case of a reservist, during inactive-duty training (i.e., drill). However, in certain circumstances, when a former servicemember, not including retirees, separates from the service completely, the Marine Corps may no longer retain personal jurisdiction over an alleged offender. (2) Discharge may involve a punitive discharge (e.g., bad conduct discharge, dishonorable discharge, or dismissal) whereby upon execution of the discharge the servicemember is completely separated from the service. In other cases, "discharge" may simply connote a transfer from Active Duty to Reserve status, whereupon the servicemember obtains a DD–214 with a characterization of service. Often marines have continuing Reserve obligations stemming from their initial contract of enlistment such as service in the Individual Ready Reserve. These previously-discharged reservists may be subject to recall for criminal prosecution of offenses committed while on Active Duty. Also, reservists who serve on Active Duty orders for 90 days or more, or who are part of a contingency operation, will receive a DD–214 upon termination of those activation orders. However, as stated above, when a former servicemember, not including retirees, separates from the service

completely, the Marine Corps may no longer retain personal jurisdiction over an alleged offender. Exceptions include persons discharged from the Armed Forces who are later charged with having fraudulently obtained their discharge and those who have deserted from the Armed Forces. (3) Article 3(d) specifically states, "A member of a Reserve component who is subject to this chapter is not, by virtue of the termination of a period of Active Duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of Active Duty or Inactive Duty training." If the marine is no longer serving in a Reserve status and not a retiree or person otherwise enumerated under article 2 then the Marine Corps may no longer retain personal jurisdiction over an alleged offender.

12. Senator REED. Major General Ewers, if a marine receives an honorable discharge and is later found to have committed a criminal act while on Active Duty, can the Marine Corp reassess the marine's character of the marine's service and change the discharge to a lesser administrative discharge?

Major General EWERS. Generally, once a marine receives a valid DD–214 with an honorable characterization of service no authorities exist to permit it from being subsequently revoked or otherwise amended to reflect a lower characterization. However, in the case of a fraudulently-obtained discharge, as described in article 3(b), each person so discharged from the Armed Forces may be subject to trial by court-martial on that charge. Upon conviction of that charge the marine may then be subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge. Additionally, upon completion of their term and separation from the service, members of the Reserve component not on Active Duty receive a DD Form 256 (Honorable Discharge Certificate) or DD Form 257 (General Discharge Certificate) for entry into their official military personnel file (OMPF). For servicemembers involuntary (administratively) separated from the service, the separation authority's direction letter, which also details their characterization of service, is provided to the servicemember and entered into their OMPF.

13. Senator REED. Major General Ewers, are there any other measures the Marine Corps can take to address the conduct of former marines for misconduct directly associated with their Marine Corps service?

Major General EWERS. Articles 2 and 3, UCMJ, provide jurisdictional authority over an enumerated list of servicemembers, which typically differ by affiliation or status within the Armed Forces. Generally, if the marine is no longer serving in a Reserve status and not a retiree or person otherwise enumerated under article 2 then the Marine Corps may no longer retain personal jurisdiction over an alleged offender for criminal prosecution. However, federal, state, or local authorities may also have jurisdiction over the person and the offense(s) and may initial criminal prosecution accordingly. Additionally, while the Separation and Retirement Manual ("MARCORSEPMAN"), MCO 1900.16 w/ CH–1, dated August 7, 2015, does not specifically grant authority for the Commandant of the Marine Corps (CMC) or Deputy Commandant of Manpower and Reserve Affairs to "reopen" the retirement grade determination of retired servicemembers, SECNAVINST [Secretary of the Navy Instruction] 1920.6c w/ CH–5, dated August 26, 2015, does permit the Secretary of the Navy, or his delegate, to reopen an officer's retirement grade determination if: "(2) Substantial new evidence is discovered within 2 years following separation which could have resulted in a lower grade determination had it been known by competent authority at the time of separation. For example, if an officer's misconduct committed while still on Active Duty is . . . substantiated after retirement by a criminal conviction or an adverse finding or conclusion from an officially documented investigation or inquiry, and such misconduct was not discoverable before retirement through due diligence, a new grade determination may be conducted. Notwithstanding the 2-year period, SECNAV may reopen a retirement grade determination up to 5 years after retirement in extraordinary circumstances . . . " Para. 3, Encl. (6) of the SECNAVINST pertains.

14. Senator REED. Major General Ewers, the UCMJ does not have a punitive article expressly prohibiting "revenge porn."

Do you believe the Military Services need a new punitive article to address the kind of alleged misconduct related to the Marines United Facebook site, or do other punitive articles of the UCMJ adequately address this misconduct?

Major General EWERS. The National Defense Authorization Act for Fiscal Year 2018 has created a new punitive article 117a, UCMJ, that expressly prohibits nonconsensual distribution of intimate images. Additionally, the U.S. Navy Regulations of 1990 were modified on April 18, 2017 to include article 1168 which prohibits the

non-consensual distribution of intimate images by marines and sailors and is punishable under article 92, UCMJ. On May 9, 2017, the MARCORSEPMAN was amended to include processing for separation is mandatory following the first substantiated incident of sexual harassment involving a "[v]iolation of article 1168 of the U.S. Navy Regulations including, but not limited to, the distribution or broadcasting of an intimate image, without consent, if done for personal gain; or with the intent to humiliate, harm, harass, intimidate, threaten, or coerce the depicted person; or with reckless disregard as to whether the depicted person would be humiliated, harmed, intimidated, threatened, or coerced."

15. Senator REED. Major General Ewers, the Navy Court of Criminal Appeals has ruled that a mere viewing of an indecent photograph was not a violation of article 120c of the Uniform Code of Military Justice.

In your view, is intentional viewing of a sexually explicit photograph of another marine who did not consent to making that photo available for such viewing prejudicial to good order and discipline or service discrediting?

Major General EWERS. (1) In United States v. Quick, 74 M.J. [Military Justice] 517, decided October 31, 2014, the Navy and Marine Corps Court of Criminal Appeals held that the specification under the charge for indecent viewing did not state an offense under article 120c, UCMJ, because the express proscription of the making or broadcasting of indecent visual recordings implied that the viewing of indecent visual recordings was not proscribed and that the specification did not allege that the appellant viewed the victim's private area but alleged that he viewed a visual recording of her private area. (2) In general, article 134, UCMJ, makes punishable acts in three categories of offenses not specifically covered in any other article of the Code—such offenses to include "all disorders and neglects to the prejudice of good order and discipline in the Armed Forces, all conduct of a nature to bring discredit upon the Armed Forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty." Article 133, UCMJ, applicable to officers, criminalizes an act or omission that, under the circumstances, constituted conduct unbecoming an officer and gentleman—i.e., "action or behavior in an official capacity which, in dishonoring or disgracing the person as an officer, seriously compromises the officer's character as a gentleman, or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer." Article 133 includes acts made punishable by any other article. (3) Whether or not the conduct described in the question above may be prosecuted under articles 133 and/or 134 depends on the facts or circumstances of each case.

[The opinion in UNITED STATES v. Quick, referenced above, attached:]

UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.

Before
F.D. MITCHELL, J.A. FISCHER, R.Q. WARD,
Appellate Military Judges

UNITED STATES OF AMERICA

v.

CHRISTOPHER A. QUICK
SERGEANT (E-5), U.S. MARINE CORPS

NMCCA 201300341
GENERAL COURT-MARTIAL

Sentence Adjudged: 29 April 2013.
Military Judge: LtCol Chris Thielemann, USMC.
Convening Authority: Commanding General, 3d Marine Aircraft Wing, Marine Corps Air Station Miramar, San Diego, CA.
Staff Judge Advocate's Recommendation: LtCol K.C. Harris, USMC.
For Appellant: Capt David Peters, USMC.
For Appellee: CDR Mary Grace McAlevy, JAGC, USN; Maj David N. Roberts, USMC; LT Lindsay Geiselman, JAGC, USN.

31 October 2014

PUBLISHED OPINION OF THE COURT

FISCHER, Senior Judge:

A general court-martial composed of officer and enlisted members convicted the appellant, contrary to his pleas, of conspiring to distribute an indecent visual recording, wrongfully viewing an indecent visual recording, and indecent conduct in violation of Articles 81, 120c, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 920c, and 934.[1] The

[1] The members acquitted the appellant of three specifications of rape and one specification of fraternization.

members sentenced the appellant to six months of confinement, reduction to pay grade E-3, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged, and except for the punitive discharge, ordered the sentence executed.

The appellant raises six assignments of error (AOE).[2] Having carefully considered the record of trial and the parties' pleadings, we find that the specification of the Additional Charge, wrongfully viewing an indecent visual recording, fails to state an offense. We will set aside the guilty finding and dismiss the underlying charge and specification and in our decretal paragraph. Arts. 59(a) and 66(c), UCMJ.

I. Background

All charges against the appellant in this case stem from a group sexual encounter that occurred in the barracks on 1 July 2012. Earlier that day, Private First Class (PFC) H remarked to several fellow Marines that he had not had sex in several months. Corporal (Cpl) H offered to contact Ms. TR, believing she would agree to have sex with PFC H. TR accepted Cpl H's invitation to come to the barracks and shortly after she arrived, PFC H and TR engaged in sexual acts in the appellant's room. Following PFC H and TR's sexual encounter, the appellant and a former Marine, JM, entered the appellant's room and simultaneously engaged in sexual acts with TR. During this sexual encounter, Cpl H used his smart phone to surreptitiously video record the three of them for a few seconds until TR saw what he was doing. After the encounter, Cpl H showed the appellant the video recording and, at the appellant's request,

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[2] The appellant raises the following AOEs:

I. Article 120c(a)(1) violates the First Amendment because it criminalizes a substantial amount of protected speech.
II. Article 120c(a)(1) violates the Fifth Amendment because it is unconstitutionally vague.
III. The appellant's conviction for viewing an indecent visual recording was not legally and factually sufficient.
IV. The indecent conduct specification, charged under clauses (1) and (2) of Article 134, fails to state an offense because it criminalizes conduct entitled to Constitutional protection and because Congress specifically superseded this charge in the latest version of the UCMJ.
V. The military judge abused his discretion for failing to dismiss a member for actual and implied bias.
VI. The appellant's sentence was overly severe given the results in companion cases.

Cpl H forwarded the video to the appellant. Later that night, TR contacted military law enforcement and reported the sexual encounter with the appellant and JM as rape.

Additional facts necessary for the resolution of each AOE are developed below.

II. Discussion

A. Knowingly and Wrongfully Viewing an Indecent Visual Recording

Although not expressly assigned as error, we first consider whether the specification under the Additional Charge for indecent viewing states an offense under Article 120c.[3] We find that it does not.[4]

Whether a specification states an offense is a question of law that is reviewed *de novo*. *United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006). A specification states an offense when it alleges every element of the offense, either expressly or by necessary implication, so as to give the accused notice and protection against double jeopardy. *Id.*; RULE FOR COURTS-MARTIAL 307(c)(3), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 ed.). In assessing whether the conduct alleged in the indecent viewing specification is prohibited by Article 120c, we apply the traditional canons of statutory construction. *United States v. King*, 71 M.J. 50, 52 (C.A.A.F. 2012). Unless ambiguous, the plain language of a statute will control unless it leads to an absurd result. *Id.* (citing *United States v. Lewis*, 65 M.J. 85, 88 (C.A.A.F. 2007)).

Article 120c's prohibition on indecent viewing criminalizes the knowing and wrongful viewing of "the private area of another person, without that other person's consent and under circumstances in which that other person had a reasonable expectation of privacy[.]" 10 U.S.C. § 920c(a)(1). The term "private area" is defined as "the naked or underwear-clad

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[3] The Specification under the Additional Charge states:

> In that [the appellant], while on active duty, did, at or near San Diego, California, on or about 1 July 2012, knowingly and wrongfully view a visual recording of the private area of Ms. [TR], without her consent and under the circumstances in which she had a reasonable expectation of privacy.

[4] The parties thoroughly addressed Article 120c's application in AOEs I-III; therefore we found it unnecessary to specify this issue.

genitalia, anus, buttocks, or female areola or nipple." 10 U.S.C. § 920c(d)(2).

The indecent viewing specification at issue alleged that the appellant knowingly and wrongfully viewed "a visual recording of the private area of [the victim], without her consent and under the circumstances in which she had a reasonable expectation of privacy." Additional Charge Sheet.[5] Importantly, the specification did not allege that the appellant viewed the victim's "private area." Rather, it alleged that the appellant viewed "a *visual recording of* the [victim's] private area." (emphasis added). We find this distinction significant because viewing of the "private area" itself, not a visual recording, is the conduct proscribed by the plain language of the statute.

It is axiomatic that when a statute is clear and unambiguous, the plain meaning controls. But even if there were some reason to stray from a literal reading of Article 120c, the canons of statutory construction would still militate against an interpretation that criminalizes indecent viewing of a visual recording of a person's private area.

To begin with, sections of a statute should be construed in connection with one another as "a harmonious whole" manifesting "one general purpose and intent." Norman J. Singer, *Statutes and Statutory Construction* § 46:05 at 154 (6th ed. 2000) (footnote omitted). "Just as a single word cannot be read in

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[5] Regarding this offense, the military judge advised the members of the following criminal elements:

> In the sole Specification of the Additional Charge, [the appellant] is charged with the offense of viewing an indecent visual recording, in violation of Article 120c, UCMJ. In order to find him guilty of this offense, you must be convinced by legal and competent evidence beyond a reasonable doubt:
>
> One, that on or about 1 July 2012, on board Marine Corps Air Station Miramar, California, the accused knowingly and wrongfully viewed a visual recording of the private area of Ms. [TR].
>
> Two, that the accused did so without the consent of [TR].
>
> Three, that under the circumstances at the time of the charged offense, [TR] had a reasonable expectation of privacy.
>
> And, four, that the accused's conduct was wrongful.

Record at 1370-71.

isolation, nor can a single provision of a statute." *Smith v. United States*, 508 U.S. 223, 233 (1993). Article 120c's prohibition of indecent viewing of the private area is just the first of three related paragraphs. The second paragraph criminalizes knowingly making a visual recording of "the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy[.]" 10 U.S.C. § 920c(a)(2). The third paragraph criminalizes knowingly broadcasting or distributing "any such recording that the person knew or reasonably should have known was made under the circumstances proscribed in paragraphs (1) and (2)[.]" 10 U.S.C. § 920c(a)(3).

We are therefore acutely cognizant of the fact that Article 120c is not silent on the issue of visual recordings. Rather, Congress used clear and unambiguous language to expressly proscribe the making of and broadcasting of indecent visual recordings, as such recordings are expressly articulated in the second and third paragraphs of the statute. Consequently, the absence of any similarly clear proscription on the viewing of indecent visual recordings is significant. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citations and internal quotation marks omitted).

Under the canon of construction that "to express or include one thing implies the exclusion of the other," *Black's Law Dictionary* 620 (8th ed. 2004) (defining "*expressio unius est exclusio alterius*"), the express proscription of the making or broadcasting of indecent visual recordings implies that the viewing of indecent visual recordings is not proscribed. *See Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980) ("[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.") (citation and footnote omitted); *see also People v. Nichols*, 474 P.2d 673, 680-81 (Cal. 1970) (applying the maxim of *expressio unius est exclusio alterius* to conclude that the statutory proscription on arson did not include the burning of a car).

We also note that criminalizing the mere viewing of indecent visual recordings, as opposed to making and broadcasting such recordings, would entail a statute of

exceptionally broad reach. If Congress had intended this statute to have such a broad reach, we would expect that intent to be clear on its face. It cannot be supposed that the legislature would, through silence, criminalize a class of conduct that is even broader than the conduct proscribed by the express provisions of the statute.

Moreover, whenever possible, we eschew interpretations that render statutes constitutionally infirm. *Crowell v. Benson*, 285 U.S. 22, 62 (1932); *see also* Singer, *supra*, § 45:11 at 68-69. Interpreting Article 120c to criminalize the mere viewing of a recording of indecent material would raise serious concerns about the statute's constitutionality under the First Amendment's overbreadth doctrine.[6] A more constitutionally defensible interpretation is that Article 120c criminalizes the three things it proscribes on its face: indecent viewing of the private area itself, making an indecent visual recording of the private area, and broadcasting an indecent visual recording of the private area.

Similar statutes prohibiting voyeurism or the surreptitious viewing, photographing, or recording of a person's private areas without their consent and when the person has a reasonable expectation of privacy from such activity have been narrowly construed. *See United States v. Alexander*, 574 F.3d 484, 490 (8th Cir. 2009) (upholding search warrant issued on suspicion that appellant recorded his sexual encounters without his partners' knowledge and implying that, although the surreptitiously taken photographs were not themselves contraband, they were evidence of the criminal act of surreptitious recording); *United States v. Rice*, 71 M.J. 719, 726 (Army Ct.Crim.App. 2012) (addressing Article 120c's predecessor, Article 120(k), UCMJ, 10 U.S.C. § 920 (2007) as a "peeping" statute and setting aside appellant's pleas of guilty because he "never articulated the facts necessary to establish that he observed or recorded another person's genitalia . . ."); *State v. Boyd*, 137 Wn. App. 910, 920 (Wash. Ct. App. 2007) (appellant convicted of peering up and taking pictures up the victims' skirts, but the pictures were used as evidence of his voyeurism and not separately prosecuted).

We have found no legal support to apply the expansive reading to the plain language of Article 120c that the Government advocates for here. Consequently, we find the

[6] The appellant addresses these concerns at length in his first AOE.

specification of the Additional Charge fails to state an offense.[7]

B. Indecent Conduct

In AOE IV, the appellant, for the first time on appeal, argues that his conviction for indecent conduct under Article 134, UCMJ fails to state an offense in light of the Supreme Court's holding in *Lawrence v. Texas*, 539 U.S. 558 (2003) and that Congress specifically superseded the charge of indecent conduct in the latest version of the UCMJ. Essentially, the appellant makes a due process challenge that his conviction for indecent conduct is unconstitutional as applied to the facts of his case.

We review *de novo* the appellant's constitutional challenge to Article 134. *United States v. Goings*, 72 M.J. 202, 205 (C.A.A.F. 2013). However, the appellant failed to raise this claim and develop facts at trial, and therefore we review for plain error. *Id.* In our plain error review, we will grant relief "only where: (1) there was error, (2) the error was plain and obvious, and, (3) that error materially prejudiced a substantial right of the [appellant]." *United States v. Sweeney*, 70 M.J. 296, 304 (C.A.A.F. 2011) (citation omitted).

1. Indecent Acts and the 2012 Edition of the UCMJ

In 2007, the Article 134, UCMJ offense of "indecent acts with another" became subject to prosecution under Article 120(k), UCMJ as an "indecent act." *See* MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.), App. 23 at A23-15. In 2012, Congress created Article 120c, UCMJ to encompass the offenses in the 2007 version of Article 120(k); however, Article 120c was only "intended to criminalize non-consensual sexual misconduct that ordinarily subjects an accused to sex offender registration." MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 ed.), App. 23 at A23-16. The 2012 edition of the Manual does not specifically include an "indecent act" charge under Article 120c or 134, UCMJ.[8]

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[7] Accordingly, we need not further address AOEs I-III.

[8] In this case, the military judge's instruction to the members on the definition of indecent conduct was "that form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations." Record at 1370. This instruction mirrors the definition of indecent conduct under Article 120(t)(12), UCMJ (2008 ed.).

The appellant argues that once Congress enacted Article 120c, indecent conduct was no longer an offense because it is not listed as a specific offense under the 2012 edition of the UCMJ and, thus, "Congress did not intend to criminalize private, consensual, group sex under the 2012 UCMJ." Appellant's Brief of 27 Jan 2014 at 58. We disagree.

Article 134, UCMJ, provides an avenue for the Government to charge offenses not specifically listed in the Manual. MCM (2012 ed.), Part IV at ¶ 60c(6)(c). However, the preemption doctrine prohibits application of Article 134 to conduct covered by other Articles in the Manual. *Id.* at ¶ 60c(5)(a). To trigger the preemption doctrine, "'it must be shown that Congress intended the other punitive article to cover a class of offenses in a complete way.'" *United States v. Anderson*, 68 M.J. 378, 387 (C.A.A.F. 2010) (quoting *United States v. Kick*, 7 M.J. 82, 85 (C.M.A. 1979); MCM (2012 ed.), Part IV, ¶ 60c(1) (stating Article 134, UCMJ "makes punishable acts in three categories of offenses not specifically covered in any other article of the code"). Congress must "indicate through direct legislative language or express legislative history that particular actions or facts are limited to the express language of an enumerated article, and may not be charged under Article 134, UCMJ." *Anderson*, 68 M.J. at 387.

Because Article 120c was only "intended to criminalize non-consensual sexual misconduct that ordinarily subjects an accused to sex offender registration"[9] and Congress did not enact an Article criminalizing indecent acts in the 2012 edition of the Manual, we find this offense properly charged under Article 134.

Here, the appellant has not demonstrated that the 2012 Congressional amendment to Article 120 preempted the use of Article 134 to criminalize indecent conduct that is prejudicial to good order and discipline or as conduct of a nature to bring discredit upon the armed forces.

2. <u>As-Applied Due Process Challenge to Indecent Conduct Charge</u>

The appellant next argues that because his charges represented a private, consensual sexual encounter between three parties, and because no aggravating factors were listed in the

[9] MCM (2012 ed.), App. 23 at A23-16.

specification, and no *Marcum* factors[10] were instructed on by the military judge, his conviction for indecent conduct cannot stand. We disagree.

Assuming arguendo that we accept the appellant's underlying premise that the sexual encounter between the appellant, TR, and JM was consensual,[11] this was not a wholly private and discreet sexual liaison. Legally sufficient evidence was adduced at trial that this conduct was prejudicial to good order and discipline and service discrediting. The sexual activity took place in an unlocked barracks room and two other service members were present during at least a portion of the sexual encounter. Moreover, one of the room's windows was left open throughout the encounter and Cpl H video recorded the conduct through the open window. *See Marcum*, 60 M.J. at 207 (quoting *Parker v. Levy*, 417 U.S. 733, 758 (1974)) ("The fundamental necessity for obedience and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.").

The appellant's argument that this was a wholly private exchange without aggravating factors is untenable. We find that the same factors the members considered in finding the appellant's conduct was prejudicial to good order and discipline and service discrediting constituted the aggravating factors that took this case out of the wholly private setting envisioned in *Lawrence*. "[W]here, as here, the predicate sexual conduct is criminal because of some additional factor (in this case, the violation of clauses 1 and 2 of Article 134, UCMJ), the burden of demonstrating that such conduct should nonetheless be

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[10] *United States v. Marcum*, 60 M.J. 198 (C.A.A.F. 2004). Those factors include:

> First, was the conduct that the accused was found guilty of committing of a nature to bring it within the liberty interest identified by the Supreme Court? Second, did the conduct encompass any behavior or factors identified by the Supreme Court as outside the analysis in *Lawrence*? Third, are there additional factors relevant solely in the military environment that affect the nature and reach of the *Lawrence* liberty interest?

Id. at 206-07 (internal citation omitted).

[11] Simply because the appellant was acquitted of the alleged forcible sexual acts does not dictate that the sexual encounter was consensual. *See United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 361 (1984) ("acquittal on criminal charges does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt.").

constitutionally protected rests with the defense at trial." *Goings*, 72 M.J. at 207 (citation omitted).

The appellant's argument that the military judge was required to instruct on the *Marcum* factors pursuant to *United States v. Castellano* also fails under the circumstances of this case. 72 M.J. 217, 221 (C.A.A.F. 2013) (holding in cases, "where, but for the presence of a *Marcum* factor, the act of [consensual] sodomy would not be subject to criminal sanction," the trier of fact must determine whether a *Marcum* factor exists); *see also United States v. Howard*, 72 M.J. 406 (C.A.A.F. 2013) (summary disposition) (holding that conduct charged under Article 120(k), UMCJ, was not plainly "private" when the sexual activity "occurred while in the presence of two additional servicemembers in the unlocked barracks room of two other servicemembers who were reasonably likely to unintentionally observe the sexual activity" and "therefore the failure of the military judge to raise a *Lawrence* issue *sua sponte* was not plain error").

In sum, the appellant falls far short of establishing error, let alone plain and obvious error. Accordingly, we reject the appellant's due process challenge to his conviction for indecent conduct under Article 134, UCMJ.

III. Sentence Reassessment

Because of our action on the findings and the principles outlined in *United States v. Moffeit*, 63 M.J. 40 (C.A.A.F. 2006), *United States v. Cook*, 48 M.J. 434, 438 (C.A.A.F. 1998), and *United States v. Sales*, 22 M.J. 305, 307-09 (C.M.A. 1986), conducting a reassessment of the sentence would not be an appropriate option within the context of this case. "A 'dramatic change in the penalty landscape' gravitates away from the ability to reassess" a sentence. *United States v. Buber*, 62 M.J. 476, 479 (C.A.A.F. 2006) (quoting *United States v. Riley*, 58 M.J. 305, 312 (C.A.A.F. 2003)).

We find that there has been a dramatic change in the penalty landscape and do not believe that an appellate court can reliably determine what sentence the members would have imposed. *Riley*, 58 M.J. at 312.

IV. Conclusion

The findings of guilty to the Additional Charge and its specification are set aside and the Additional Charge and its

specification are dismissed. The remaining findings of guilty are affirmed. The sentence is set aside. We return the record to the Judge Advocate General for remand to an appropriate CA with a rehearing on the sentence authorized.[12] Following post-trial processing the record will be returned to the Court for completion of appellate review. *Boudreaux v. U.S. Navy-Marine Corps Court of Military Review*, 28 M.J. 181 (C.M.A. 1989).

Chief Judge MITCHELL and Senior Judge WARD concur.

For the Court

R.H. TROIDL
Clerk of Court

[12] Due to our action relative to the sentence, AOE VI, relating to sentence disparity in companion cases, is presently moot. We find no merit to and summarily dismiss AOE V concerning the alleged bias of a panel member. *United States v. Clifton*, 35 M.J. 79, 81-82 (C.M.A. 1992).

16. Senator REED. Major General Ewers, can such conduct be charged as a violation of article 134 of the UCMJ?

Major General EWERS. (1) In United States v. Quick, 74 M.J. 517, decided October 31, 2014, the Navy and Marine Corps Court of Criminal Appeals held that the specification under the charge for indecent viewing did not state an offense under article 120c, UCMJ, because the express proscription of the making or broadcasting of indecent visual recordings implied that the viewing of indecent visual recordings was not

proscribed and that the specification did not allege that the appellant viewed the victim's private area but alleged that he viewed a visual recording of her private area. (2) In general, article 134, UCMJ, makes punishable acts in three categories of offenses not specifically covered in any other article of the Code—such offenses to include "all disorders and neglects to the prejudice of good order and discipline in the Armed Forces, all conduct of a nature to bring discredit upon the Armed Forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty." Article 133, UCMJ, applicable to officers, criminalizes an act or omission that, under the circumstances, constituted conduct unbecoming an officer and gentleman—i.e., "action or behavior in an official capacity which, in dishonoring or disgracing the person as an officer, seriously compromises the officer's character as a gentleman, or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer." Article 133 includes acts made punishable by any other article. (3) Whether or not the conduct described in the question above may be prosecuted under articles 133 and/or 134 depends on the facts or circumstances of each case.

QUESTIONS SUBMITTED BY SENATOR KIRSTEN GILLIBRAND

MARINES UNITED

17. Senator GILLIBRAND. General Neller, Major General Ewers, and Mr. Traver, what can you tell us about the additional groups that have grown out of Marines United?

General NELLER, Major General EWERS, and Mr. TRAVER. NCIS has not seen additional groups grow out of the original Marines United private Facebook group. Our investigation has determined that the original Marines United site was taken down, and individuals have subsequently recreated/replicated the site. The NCIS investigation has also identified additional sites on the Internet that depict nude servicemembers, both male and female, from all Services. Many of these sites predated the Marines United site, and many were active concurrently with the Marines United site. NCIS continues to investigate whether or not any photographs on these sites are connected to a criminal offense.

18. Senator GILLIBRAND. Mr. Traver, if you have a cooperating witness, why don't you have access to the Google Drive?

Mr. TRAVER. NCIS has utilized cooperating witnesses associated with social media platforms and suspect websites. NCIS could not access the Google drive associated with the Marines United site because the Google drive was disabled prior to NCIS commencing its investigation.

19. Senator GILLIBRAND. Mr. Traver, are you aware of any civilians or military family members whose images were posted?

Mr. TRAVER. NCIS is investigating all criminal allegations under NCIS' jurisdiction. Throughout the investigation, civilians and military family members have been identified. NCIS works with other federal, state and local law enforcement agencies and prosecutors on criminal information developed outside of NCIS' jurisdiction.

20. Senator GILLIBRAND. Major General Ewers, do you have the authorities to move people who participated in the Drive if the person who they posted is in the same location as they are? What about others who harass a survivor because they saw her photo online?

General EWERS. The Commandant of the Marine Corps takes seriously and understands the intolerable and corrosive effects that online social media misconduct has on our institution. He is committed to doing what is necessary to change the negative elements within the organization that have failed to appreciate the core values of dignity and respect and have ultimately facilitated this problem. Reassignment of personnel must be considered on a case by case basis, ensuring continuing support for victims while safeguarding due process for alleged offenders. The Marine Corps Personnel Assignment Policy, Marine Corps Order 1300.8, dated 18 September 2014, authorizes the administrative reassignment or transfer of Marines accused of sexual assault or related offenses. Further, Marine Corps Order 1752.5B, Sexual Assault Prevention and Response (SAPR) Program, dated 1 March 2013, outlines the policies and procedures for administrative reassignment or transfer of these Marines. PCS [permanent change of station] orders should be used to facilitate transfers only in extreme cases, when no other options are available. Only CMC

(MM/RA [Manpower Management/Reserve Affairs]) may effect PCA [permanent change of assignment] or PCS orders. However, the Sexual Assault Initial Disposition Authority (SA–IDA) of the accused may authorize and effect intra-unit or unit transfers.

QUESTIONS SUBMITTED BY SENATOR RICHARD BLUMENTHAL

MARINE CORPS PRECEDENCE

21. Senator BLUMENTHAL. Secretary Stackley, General Neller, General Ewers, and General Reynolds, the Marines United incident is not an isolated occurrence, rather it is the third reported case of sexist, online harassment in the last 4 years for the Marines. In 2013, the Marine Corps was heavily criticized for its failure to address online targeting of female marine by their fellow servicemembers. Then-Commandant General Amos began to address social media and it was soon reported to Congress that training and policies were put in place to deter marines from inappropriate conduct. However, in 2014 another report was published that detailed Facebook accounts run by male marines that exploited women and perpetuated rape culture. Clearly, the training and policies the Marines have implemented is not working. I am disheartened that we are here again discussing a remarkably similar occurrence, a mere 4 years later. What are you going to do put a stop to this behavior? What resources and support are available to marines and civilians that suspect their photographs or information have been compromised?

Secretary STACKLEY, General NELLER, General EWERS, and General REYNOLDS. We formed a task force led by Assistant Commandant General Glenn Walters to recommend long-term solutions for the Corps. This is a complex problem, and we must address it thoughtfully to ensure we reach all ranks. In the near term, we are looking at ways to address online behaviors in our existing initiatives. We continue to seek innovative ways and a holistic approach to address destructive behaviors. One example includes "Join the Conversation," a Professional Military Education designed to provide marines with guidance on identifying potentially destructive behaviors, confronting biases, and intervening appropriately. Specifically, it addresses the destructive behaviors hazing, sexual harassment, sexual assault, retaliation, and alcohol misuse. We are currently revising that education to directly confront the unacceptable permissive culture that promulgates the objectification of women. Marines, their dependents, and civilians impacted by this online misconduct are our highest priority. We will take care of them. We have established many avenues to access support services and made sure our service providers have the tools necessary to support those impacted. Service providers stand ready to provide immediate crisis intervention and information and referrals to anyone who comes forward. If someone impacted by the Marines United article or other social media misconduct wishes to maintain privacy, he/she may reach out to the chaplain and/or Victims Legal Counsel (VLC). The Marine Corps DSTRESS line provides a 24 hours a day, 7 days a week, anonymous phone and chat and referral service using a 'Marine-to-Marine' approach via 1–877–476–7734 and/or through www.marines.mil. Other services available to an individual impacted are behavioral health counselors (Community Counseling Program), Sexual Assault Prevention and Response Victim Advocates, chain of command, Naval Criminal Investigative Services (NCIS), local law enforcement, Inspector General, equal opportunity advisors, victim witness assistant coordinators, and Military OneSource. A Marine Corps-specific website (www.marines.mil/) launched on 16 March 2017 and provides options for supportive services for those impacted by the Marines United article and/or other social media misconduct. The website also contains a multitude of frequently asked questions pertaining to social media misconduct. To report a crime or pass information on Marines United, NCIS provides servicemembers and civilians safe, discreet, and anonymous options to report criminal and force protection threats. Complaints may be reported to the Naval Criminal Investigative Service through their website; by text; by using the TipSubmit App; and/or by phone. Alternatively, reports may be made through the local Inspector General Hotline.

22. Senator BLUMENTHAL. Secretary Stackley, General Neller, and Sergeant Major Green, the Marine Corps has training and policies providing guidance for online behavior. Clearly this is not enough. I believe this is a deeply rooted cultural issue. Until this culture is changed, we will continue to see these horrendous events. How do you intend to change the culture to stop promulgating the objectification of women and truly treat them as equals?

Secretary STACKLEY, General NELLER and Sergeant Major GREEN. Our core values are honor, courage, and commitment. Marines who objectify women and do not treat them as equals are not living up to those values, to our Marine Corps ethos. A culture permissive to this kind of demeaning behavior is unacceptable. We formed a task force led by Assistant Commandant General Glenn Walters to recommend long-term solutions for the Corps. This is a complex problem, and we must address it thoughtfully to ensure we reach all ranks. Every marine—and that includes female marines—earns their title and deserves the respect of their fellow marines. Addressing this permissive culture begins at the recruiting depots and carries forward throughout the career of a marine. Our training and educations programs are under revision now to tackle this problem head on. This cultural change will begin in the classroom, but it will not end there. We will take our message to the barracks, to the rifle range, to online forums—to any environment that marines operate—and will make it clear that misogyny is not compatible with our core values. One resource we have created to share this message is a commander's discussion guide. The guided scenarios and background information in this guide will help ensure that all marines are trained and have the necessary tools to combat this demeaning behavior.

23. Senator BLUMENTHAL. General Reynolds, do you believe the current training and policies are accurate enough and broad enough to cover the vastness of cyber possibilities? How would you change any of the current training or policies to better protect marines?

General Reynolds did not respond in time for printing. When received, answer will be retained in committee files.

UCMJ, ARTICLE 120C

24. Senator BLUMENTHAL. General Neller, General Ewers, and Mr. Traver, article 120c of the Uniform Code of Military Justice is one of the articles that individuals suspected of participating in distributing pictures on Marines United could be prosecuted under. The Marine Corps has said there have already been individuals in unrelated cases prosecuted for violating article 120c. It reads:

(a) Indecent Viewing, Visual Recording, or Broadcasting.—Any person subject to this chapter who, without legal justification or lawful authorization—
  (1) knowingly and wrongfully views the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy;
  (2) knowingly photographs, videotapes, films, or records by any means the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy; or
  (3) knowingly broadcasts or distributes any such recording that the person knew or reasonably should have known was made under the circumstances proscribed in paragraphs (1) and (2);

is guilty of an offense under this section and shall be punished as a court-martial may direct.

How has the Marine Corps handled similar cases, in terms of military justice or administrative actions? How many marines have been prosecuted under article 120c of the UCMJ for social media violations?

General NELLER, General EWERS, and Mr. TRAVER. To date (since the report of misconduct involving members the Marines United Facebook group), there have been at least 116 subjects, suspects, or persons of interest (hereinafter, collectively, "subjects") reported for alleged online social media misconduct involving 22 non-DOD civilians and 94 marines as subjects. Of the 94 cases in which the Marine Corps maintained at least administrative jurisdiction, 68 cases have reached disposition and 26 remain in a pending status. In terms of severity of action, there have been guilty findings at 5 special courts-martial and 1 summary court-martial; 10 cases adjudicated via non-judicial punishment; 5 administrative separations; 25 formal adverse administrative actions; and, in 22 cases, no formal administrative action. In each of these cases commanders have exercised their independent and unfettered disciplinary disposition authority in reaching their decisions. Authorities for the various disciplinary actions have involved, among others: violations of the UCMJ article 92, (pursuant to article 1168, U.S. Navy Regulations, and Marine Corps Order 1000.9A (Sexual Harassment)); article 120c; article 134; and, 18 U.S.C. 2261A (Stalking). The investigation into the Marines United Facebook Group involved a review of more than 120,000 images from over 170 other websites. Investigators determined that while there were more than 22,000 images with persons

depicted who had a possible Department of Defense affiliation, there were approximately 7,867 images with persons depicted who had a possible Marine Corps affiliation. Employing technology to include facial recognition software, investigators determined that only 68 potential victims were identifiable of the 7,867 images. Further, investigators confirmed 31 of the 68 potential victims, and only 8 confirmed victims were able to identify a subject. These subjects are factored into the 116 subjects reported for investigation and disposition.

25. Senator BLUMENTHAL. General Neller, General Reynolds, General Ewers, and Mr. Traver, article 120c only addresses instances in which photos were taken without consent. This does not include photos that were taken with the consent, but then distributed beyond the consented party—more commonly known as a form of revenge porn. The original story broken by investigative journalist Thomas James Brennan on this scandal reports that many of the photos seem to fall within this category. This is an important privacy issue that must be addressed. Do you agree that there is a gap in the UCMJ for this type of crime? What other gaps do you believe exist?

General NELLER, General REYNOLDS, General EWERS, and Mr. TRAVER. In United States v. Quick, 74 M.J. 517, decided October 31, 2014, the Navy and Marine Corps Court of Criminal Appeals held that the specification under the charge for indecent viewing did not state an offense under article 120c, UCMJ, because the express proscription of the making or broadcasting of indecent visual recordings implied that the viewing of indecent visual recordings was not proscribed and that the specification did not allege that the appellant viewed the victim's private area but alleged that he viewed a visual recording of her private area. NDAA updates, year over year, continue to impact the area of military justice, to include both substantive and procedural changes. For example, article 120c, UCMJ—other sexual misconduct—is amended to correct mistaken indications that it applies to the nonconsensual broadcasting of an image of a private area where the image was initially created with the subject's consent. The National Defense Authorization Act for Fiscal Year 2018 has created a new punitive article 117a, UCMJ, that expressly prohibits non-consensual distribution of intimate images. Additionally, the U.S. Navy Regulations of 1990 were modified on April 18, 2017 to include article 1168 which prohibits the non-consensual distribution of intimate images by marines and sailors and is punishable under article 92, UCMJ. On May 9, 2017, the MARCORSEPMAN was amended to include processing for separation is mandatory following the first substantiated incident of sexual harassment involving a "[v]iolation of article 1168 of the U.S. Navy Regulations including, but not limited to, the distribution or broadcasting of an intimate image, without consent, if done for personal gain; or with the intent to humiliate, harm, harass, intimidate, threaten, or coerce the depicted person; or with reckless disregard as to whether the depicted person would be humiliated, harmed, intimidated, threatened, or coerced." In general, article 134, UCMJ, makes punishable acts in three categories of offenses not specifically covered in any other article of the Code—such offenses to include "all disorders and neglects to the prejudice of good order and discipline in the Armed Forces, all conduct of a nature to bring discredit upon the Armed Forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty." Article 133, UCMJ, applicable to officers, criminalizes an act or omission that, under the circumstances, constituted conduct unbecoming an officer and gentleman—i.e., "action or behavior in an official capacity which, in dishonoring or disgracing the person as an officer, seriously compromises the officer's character as a gentleman, or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer." Article 133 includes acts made punishable by any other article. Whether or not the conduct described in the question above may be prosecuted under articles 133 and/or 134 depends on the facts or circumstances of each case.

26. Senator BLUMENTHAL. General Neller, General Reynolds, General Ewers, and Mr. Traver, understanding that the criminal investigation related to Marines United has only just begun, what articles of the UCMJ besides article 120c would you expect that individuals could be charged with given the types of activities described by the investigative journalist? What types of punishment will you seek?

General NELLER, General REYNOLDS, General EWERS, and Mr. TRAVER. As has been the case, I expect each of the commanders involved in these cases to exercise their independent and unfettered disciplinary disposition authority in reaching their decisions. Authorities for the various disciplinary actions have involved, among others: violations of the UCMJ article 92, (pursuant to article 1168, U.S. Navy Regula-

tions, and Marine Corps Order 1000.9A (Sexual Harassment)); article 120c; article 134; and, 18 U.S.C. 2261A (Stalking).

NCIS INVESTIGATION

27. Senator BLUMENTHAL. General Reynolds, in early February, an investigative reported contacted Marine Corps Public Affairs Office to inform them of his intent to publish a story about Marines United Facebook page. The reporter, a former marine, was concerned that the private pages on this site contained inappropriate content to include a Google drive containing pictures of women (some of them naked) and personal information about them to include name, rank, and work location. An NCIS investigation began on February 22, 2017. Letters have been sent to Facebook and Google to preserve the sites. Google has taken down the Google drive while the Facebook page continues to function. A subpoena for information regarding the Facebook page is expected to be granted this week (March 13–18). Marines United was started as a suicide prevention support page and had 30,000 members. There are reports that new Facebook pages and sites have popped up to replace Marines United. How are you addressing these breakoff groups? How will you hold marines accountable that continue to perpetrate this abhorrent conduct?

General Reynolds did not respond in time for printing. When received, answer will be retained in committee files.

28. Senator BLUMENTHAL. General Reynolds, what has been done to work with social media and network providers to delete photos?

General Reynolds did not respond in time for printing. When received, answer will be retained in committee files.

29. Senator BLUMENTHAL. Mr. Traver, not everyone involved in the Marines United incident will be prosecutable under the UCMJ—as reports have led us to believe that civilians and former marines (not retired) were involved. You testified that you are not working with local authorities. Why is that? Will you commit to actively assisting civilian prosecutors within the appropriate jurisdiction in bringing these individuals to justice?

Mr. TRAVER. NCIS is actively investigating all criminal allegations as they pertain to this matter. During the course of the ongoing investigation, NCIS has identified civilians and former servicemembers as potential victims and potential suspects. If, during the course of these investigations, information is developed about potential victims or suspects outside of NCIS' jurisdiction, NCIS will extract all pertinent information and actionable criminal intelligence related to the allegation and will make contact with the applicable federal, state or local law enforcement entity or civilian prosecutor with jurisdiction. NCIS will work in conjunction with that agency in pursuit of judicial outcomes.

30. Senator BLUMENTHAL. General Neller, General Reynolds, General Ewers, and Mr. Traver, what has been done to communicate with and assist identifiable victims?

General Neller, General Reynolds, General Ewers, and Mr. Traver did not respond in time for printing. When received, answer will be retained in committee files.

31. Senator BLUMENTHAL. General Neller, General Reynolds, General Ewers, and Mr. Traver, what is the Marine Corps doing to encourage people to come forward?

General NELLER, General REYNOLDS, General EWERS, Mr. TRAVER. To date (since the report of misconduct involving members the Marines United Facebook group), there have been at least 116 subjects, suspects, or persons of interest (hereinafter, collectively, "subjects") reported for alleged online social media misconduct involving 22 non-DoD civilians and 94 Marines as subjects. Of the 94 cases in which the Marine Corps maintained at least administrative jurisdiction, 68 cases have reached disposition and 26 remain in a pending status. In terms of severity of action, there have been guilty findings at 5 special courts-martial and 1 summary court-martial; 10 cases adjudicated via non-judicial punishment; 5 administrative separations; 25 formal adverse administrative actions; and, in 22 cases, no formal administrative action. In each of these cases commanders have exercised their independent and unfettered disciplinary disposition authority in reaching their decisions. Authorities for the various disciplinary actions have involved, among others: violations of the UCMJ Article 92, (pursuant to Article 1168, U.S. Navy Regulations, and Marine Corps Order 1000.9A (Sexual Harassment)); Article 120c; Article 134; and, 18 U.S.C. 2261A (Stalking). The investigation into the Marines United Facebook Group in-

volved a review of more than 120,000 images from over 170 other websites. Investigators determined that while there were more than 22,000 images with persons depicted who had a possible Department of Defense affiliation, there were approximately 7,867 images with persons depicted who had a possible Marine Corps affiliation. Employing technology to include facial recognition software, investigators determined that only 68 potential victims were identifiable of the 7,867 images. Further, investigators confirmed 31 of the 68 potential victims, and only 8 confirmed victims were able to identify a subject. These subjects are factored into the 116 subjects reported for investigation and disposition.

32. Senator BLUMENTHAL. Mr. Traver, does NCIS have the resources and capability to fully investigate this situation? What other federal agencies are you working with?

Mr. TRAVER. Yes, NCIS possesses sufficient manpower and technical resources to fully investigate this situation. NCIS has allocated significant resources to investigate allegations of criminal violations associated with this investigative effort. NCIS special agents throughout the agency are aggressively working investigations relating to the nonconsensual taking and nonconsensual posting of sexually explicit photographs of servicemembers. An NCIS-led Military Criminal Investigative Organization Task Force has been established at the Russell-Knox Building in Quantico, Va., to thoroughly investigate criminal allegations irrespective of Military Service. This task force includes NCIS special agents from the criminal investigations directorate, special agents from the cyber directorate, computer scientists, criminal analysts and criminal sociologists. The task force is composed of assets from NCIS, Air Force Office of Special Investigations, U.S. Army Criminal Investigation Command and Coast Guard Investigative Service. If, during the conduct of the investigations, individuals are identified that do not fall under the purview of one of the members of the task force, NCIS will contact the appropriate federal, state or local law enforcement entity.

33. Senator BLUMENTHAL. Mr. Traver, you testified that NCIS has a cooperative witness with access to the Google drive, but that NCIS does not have access to the drive. Why have you not gained access to the drive?

Mr. TRAVER. NCIS has utilized cooperating witnesses associated with social media platforms and suspect websites. NCIS could not access the Google drive associated with the Marines United site because the Google drive was disabled prior to NCIS initiating an investigation.

CYBER BULLYING

34. Senator BLUMENTHAL. General Ewers, I understand the Uniform Code of Military Justice (UCMJ) is broadly written, but it does not explicitly address cyber bullying. Article 134 functions as a catchall, stating "Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the Armed Forces, all conduct of nature to bring discredit upon the Armed Forces, and crimes and offenses no capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court." While I have been told this article could be used to prosecute cyber bullying, I would argue that having an article in the UCMJ specifically addressing cyber bullying would not only provide a means for pointed prosecution, but would send a message that DOD is serious about its obligation to protecting its servicemembers and prosecuting those that intend to do harm. The consequences for these inappropriate actions on Marines United need to be severe and swift enough to make a significant impact to change and deter despicable behavior. I am considering introducing legislation to specifically include cyberbullying as an offense under the UCMJ. Do you believe it would be helpful to more explicitly address cyber bullying by including an article specifically addressing it to get at behavior that uses electronic communications to intimidate or threaten other marines? Are there examples you can point to when the existing catchall provision has been effectively used by JAGs [Judge Advocate Generals] to prosecute for behavior that would be considered by a layman to be cyberbullying?

General EWERS. In general, article 134, UCMJ, makes punishable acts in three categories of offenses not specifically covered in any other article of the Code—such offenses to include "all disorders and neglects to the prejudice of good order and discipline in the Armed Forces, all conduct of a nature to bring discredit upon the Armed Forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty." Article 133, UCMJ, applicable to officers, criminalizes an

act or omission that, under the circumstances, constituted conduct unbecoming an officer and gentleman—i.e., "action or behavior in an official capacity which, in dishonoring or disgracing the person as an officer, seriously compromises the officer's character as a gentleman, or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer." Article 133 includes acts made punishable by any other article. Whether or not the conduct described in the question above may be prosecuted under articles 133 and/or 134 depends on the facts or circumstances of each case. The National Defense Authorization Act for Fiscal Year 2018 has created a new punitive article 117a, UCMJ, that expressly prohibits non-consensual distribution of intimate images. Additionally, the U.S. Navy Regulations of 1990 were modified on April 18, 2017 to include article 1168 which prohibits the non-consensual distribution of intimate images by marines and sailors and is punishable under article 92, UCMJ. Additionally, authorities for the various disciplinary actions may involve, among others: violations of the UCMJ article 92, (pursuant to Marine Corps Order 1000.9A (Sexual Harassment)); article 120c; article 134; and, 18 U.S.C. 2261A (Stalking).

35. Senator BLUMENTHAL. General Ewers, the Supreme Court considered the question of freedom of expression in the Armed Forces in the 1974 case, Parker v. Levy. The decision noted, "Speech that is protected in the civil population may nonetheless undermine the effectiveness of response to command. If it does, it is constitutionally unprotected." In order for the individuals who have participated in cyber bullying and harassment to fully be held accountable, it is important for us to understand what speech you all believe is constitutionally protected in these circumstances. Do you believe that speech designed to intimidate or endanger the lives of marines is protected by the First Amendment? From what you have learned of the photographs and statements made on the relevant Google drive on the Marines United Facebook page, do you anticipate finding conduct that is not constitutionally protected and can be prosecuted under the UCMJ? Will you extend that analysis to both military and retired military?

General EWERS. The National Defense Authorization Act for Fiscal Year 2018 has created a new punitive article 117a, UCMJ, that expressly prohibits non-consensual distribution of intimate images. Moreover, the U.S. Navy Regulations of 1990 were modified on April 18, 2017 to include article 1168 which prohibits the non-consensual distribution of intimate images by marines and sailors and is punishable under article 92, UCMJ. Additionally, authorities for the various disciplinary actions may involve, among others: violations of the UCMJ article 92, (pursuant to Marine Corps Order 1000.9A (Sexual Harassment)); article 120c; article 134; and, 18 U.S.C. 2261A (Stalking). Articles 2 and 3, UCMJ, permit the Marine Corps to prosecute current servicemembers and retirees, among others specifically enumerated, for an offense committed while on Active Duty or, in the case of a reservist, during inactive-duty training (i.e., drill). However, in certain circumstances, when a former servicemember, not including retirees, separates from the service completely, the Marine Corps may no longer retain personal jurisdiction over an alleged offender. Article 3(d) specifically states, "A member of a Reserve component who is subject to this chapter is not, by virtue of the termination of a period of Active Duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of Active Duty or inactive-duty training." If the marine is no longer serving in a Reserve status and not a retiree or person otherwise enumerated under article 2 then the Marine Corps may no longer retain personal jurisdiction over an alleged offender. However, federal, state, or local authorities may also have jurisdiction over the person and the offense(s) and may initial criminal prosecution accordingly.

36. Senator BLUMENTHAL. General Neller, General Reynolds, General Ewers, Mr. Traver, and Sergeant Major Green, to deter future incidents, I believe individuals must be held accountable for their actions. When this investigation is complete, do you commit to holding these individuals accountable to the fullest extent of the Uniform Code of Military Justice and to reporting back to us any barriers to your investigation in current law that made it more challenging to prosecute so that we may make it easier to hold people accountable in the future?

General NELLER, General REYNOLDS, General EWERS, Mr. TRAVER and Sergeant Major GREEN. We take seriously and understand the intolerable and corrosive effects that online social media misconduct has on our institution. We are committed to doing what is necessary to change the negative elements within the organization that have failed to appreciate the core values of dignity and respect and have ultimately facilitated this problem as well as to ensure that commanders have the tools

necessary for accountability. With that said, we also expect each of the commanders involved in these cases to exercise their completely independent and unfettered disciplinary disposition authority in reaching their decisions.

QUESTIONS SUBMITTED BY SENATOR ELIZABETH WARREN

UPDATING ARMED FORCES DISCIPLINARY CONTROL BOARD PROCEDURES

37. Senator WARREN. General Neller, Marine Corps commanders currently have the authority to maintain a list of establishments that are off-limits for servicemembers, under procedures set in place at 32 C.F.R 631, Armed Forces Disciplinary Control Board. In 2013, one of your predecessors, General Amos, told Rep. Jackie Speier that the Marines were examining whether it was possible to legally make certain websites off-limits in the same way (letter attached for reference).

What was the result of that assessment?

General NELLER. In 2006, the Services signed onto a measure which governed the establishment and operation of Armed Forces Disciplinary Control Boards (AFDCB) by the Services, applicable to the Marine Corps as Marine Corps Order 1620.2D. The order states that the Commandant, U.S. Marine Corps will develop and have staff supervision over AFDCBs and off-installation enforcement policies. The establishment of off–limits areas is a function of command. It may be used by commanders to help maintain good order and discipline, health, morale, safety, and welfare of service personnel. Off-limits action is also intended to prevent service personnel from being exposed to or victimized by crime-conducive conditions. Where sufficient cause exists, commanders retain substantial discretion to declare establishments or areas temporarily off-limits to personnel of their respective commands in emergency situations. Service personnel are prohibited from entering establishments or areas declared off-limits according to this regulation. Violations may subject the member to disciplinary action per applicable service regulations and the UCMJ. However, the AFDCBs are used on brick-and-mortar establishments within a base's or installation's defined geographic parameters or jurisdiction, generally. The same cannot be said of Internet sites, particularly given the scope and quantity of sites on the Internet, how quickly they are created, moved, and/or deleted. Further, the procedure for placing an establishment on an off-limits list affords the proprietor of said establishment with due process, often including an invitation to meet, engage in productive discourse, and arrange to remove any aspect that operates to degrade good order and discipline, etc. Therefore, it is not feasible to make certain Internet websites off-limits in the same way as brick-and-mortar establishments.

38. Senator WARREN. General Neller, would you support an off-limits list of this nature, why or why not?

General NELLER. For the above-stated reasons, it is not feasible to make certain websites off-limits in the same way as brick-and-mortar establishments.

39. Senator WARREN. General Neller, do you need additional authorities in order to be able to create such a list, and if so, what authorities are needed?

General NELLER. For the above-stated reasons, it is not feasible to make certain websites off-limits in the same way as brick-and-mortar establishments.

MONITORING ADVERSE BEHAVIOR ON THE INTERNET

40. Senator WARREN. General Neller, in your press briefing last week, you said "the Marine Corps is not out there looking for sites" like this. Given the number of incidents, will you reconsider this policy, why or why not?

General Neller did not respond in time for printing. When received, answer will be retained in committee files.

COMPREHENSIVE TRAINING FOR INTEGRATION OF WOMEN INTO COMBAT ARMS

41. Senator WARREN. General Neller, the Marine Corps did a significant amount of training in preparation for the repeal of Don't Ask Don't Tell, and by many accounts that training was very effective. What training was provided to marines in advance of the integration of women into combat arms roles, and how does this training compare to the Don't Ask Don't Tell experience?

General NELLER. The material and delivery methodology were modeled on the plan used for "Don't Ask Don't Tell" training. During 2016, the Marine Corps sent a mobile training team (MTT) to 11 major bases and stations around the world to provide Tier 1 training and educational materials to more than 1,000 Marine lead-

ers. Designed to set the conditions for successful integration of female marines into newly opened MOSs [military occupation specialty codes] and units, the MTT briefed and conducted small group discussions focusing on: An overview of the Marine Corps Integration Implementation Plan Administrative changes as a result of the new policy; Lessons learned from previously integrated Marine Corps units and Allied Forces; Unconscious bias effects on decision making, Organizational culture; and Communication skills and techniques Every O–5 and O–6 level command was required to identify at least two command representatives to attend Tier 1 training. Commanders and sergeants major were highly encouraged to attend Tier 1 training but could send representatives in their place. For Active component units, at least one command representative had to be an officer (O–3 or above) and an enlisted command representative had to be E–7 or above. For Reserve component units, command representatives could be from the Selected Marine Corps Reserve (SMCR) and/or the Inspector and Instructor (I&I) staff. As unit subject matter experts, the command representatives then trained commanders and their staffs (tier 2), who in turn trained subordinate leaders (tier 3) who then trained marines and sailors under their charge (tier 4). Training was conducted in small group guided discussions.

42. Senator WARREN. General Neller, was the above training provided to all marines, or only to marines serving in combat units newly-designated for integration?

General NELLER. Training was provided to all marines, both Active and Reserve. For marines in the Active component, tier 2 training was completed by August 2016; tier 3 training completed by September 2016; and tier 4 training completed by October 2016. For marines in the Reserve component, tier 2 training was completed by October 2016; tier 3 training by November 2016; and tier 4 training completed by January 2017.

43. Senator WARREN. General Neller, what training does the Marine Corps currently provide to educate marines about the importance of preventing sexual harassment, and is this training standardized and mandatory across the force, or subject to the commander's discretion?

General NELLER. Educating marines about the importance of preventing sexual harassment is both standardized and comprehensive throughout the Marine Corps. At entry level training, extensive training is conducted for both officer and enlisted marines. All marines are required to receive annually 3 hours of Equal Opportunity training on Sexual Harassment, Discrimination and Hazing conducted by command-designated personnel. Training topics include: equal opportunity leadership awareness; Examples of prohibited activities and how they differ from authorized activities Command and individual responsibilities to prevent and report sexual harassment, discrimination, and hazing; Unit reporting requirements; Sexual harassment and the Uniform Code of Military Justice; and Consequences for victim/witness retaliation. All recruits receive approximately 40 hours of formal training in core values, 1.5 hours on hazing, 1.5 hours on cultural awareness, 2 hours on ethics, and 1.5 hours on equal opportunity. Additionally, there are numerous guided discussions throughout recruit training that have tie-ins to core values. Officer candidates receive approximately 3 hours of formal core values training, 3 hours of training on hazing, 6 hours in formal ethics instruction and 6 hours on equal opportunity. As with recruit training, there are numerous guided discussions and practical events that reinforce the Marine Corps' core values. Students at The Basic School receive 8.5 hours of formal core values training, 3.5 hours on hazing, 3.5 hours in cultural awareness, 11.5 hours in formal ethics instruction and 3.5 hours on equal opportunity. Through the mandated Commandant's Commandership Course, all prospective commanding officers and senior enlisted advisors receive training on command climate, hazing and equal opportunity.

44. Senator WARREN. General Neller, is training provided verbally via in-person sessions or are marines permitted to complete this training online?

General NELLER. Both entry level training and annual refresher training are conducted verbally through classroom instruction and guided discussions.

45. Senator WARREN. General Neller, does this training include any effort to discourage misogynistic or disparaging language toward women?

General NELLER. In the Marine Corps we have a saying: everything we do, in garrison or in the field, is preparation for combat. In a similar vein, we teach marines that all of our actions—on duty or on liberty—reflect who we are and what values we truly hold. We teach marines that honor, courage and commitment are not merely things we do; they are values bred into each and every marine from day one at

boot camp or OCS [Officer Candidate School] and reflected 24/7 in our conduct in all circumstances. Commanders publish equal opportunity policy, stress leadership accountability and emphasize teamwork. Discrimination in any form—color, gender, race, religion, or national origin—or creating or failing to correct a hostile work environment based on any form of discrimination is contrary to our core values, and is contrary to mission accomplishment.

46. Senator WARREN. General Neller, does this training currently address behavior on social media?

General NELLER. Yes. As far back as 2010, the Marine Corps issued formal guidance on the appropriate and inappropriate use of social media. Among other things, that guidance stated that all marines are responsible for what they post; that the line between professional and personal lives blur in the online environment; and that postings that are defamatory, libelous, abusive, threatening, racially or ethnically hateful, or otherwise offensive or illegal may result in discipline under the UCMJ. All recruits receive approximately 2 hours of classroom instruction on social media awareness, and officer candidates receive a guided discussion on "Being a Lieutenant of Marines" taught by the OCS Commander that covers social media awareness.

RECRUIT TRAINING

47. Senator WARREN. General Neller, you disagreed with the characterization that marine recruit training was segregated: "I would not couch our recruit training as segregated." Please provide a full break down of the activities male and female recruits perform together and those activities that they perform separately.

General NELLER. During recruit training, approximately 61 percent of training for males and females is conducted in the same place at the same time. During the first phase of recruit training (shipping and receiving), classroom academics, and water survival (approximately 57 hours of training) are conducted concurrently (male/female). During the second phase (grass/firing weeks and Marksmanship Training Platoon), Team Week, Basic Warrior Training and Table 2 firing (approximately 153 hours) are conducted concurrently. During Phase 3 (academic testing), The Crucible, Emblem Ceremony, liberty, Marine Week, Family Day, and Graduation are conducted concurrently (approximately 169 hours). The remaining time is gender-separate, predominately during gender-specific wellness classes, activities that highlight the physical capability differences between the sexes, and barracks time. The Center for Naval Analyses (CNA) is currently researching the extent and effectiveness of gender-combined training and possible options to increase gender-combined training at Parris Island.

48. Senator WARREN. General Neller, how many male recruits graduated from Marine Recruit Depot Parris Island each year for the past five years? How many females?

General NELLER. During the past five years, 73,654 males graduated from Parris Island, an average of 14,731 per year. During that time, 12,886 females graduated from Parris Island, an average of 2,577 per year. See table below.

	Year to date						
	FY12	FY13	FY14	FY15	FY16	FY17	TOTAL
Male	15,568	16,207	12,888	14,375	14,616	2,916	76,570
Female ...	2,455	2,564	2,521	2,537	2,809	589	13,475
Total ..	18,023	18,771	15,409	16,912	17,425	3,505	90,045

Data retrieved on 3/20/2017.

49. Senator WARREN. General Neller, how many male recruits graduated from Marine Recruit Depot San Diego each year for the past five years?

General NELLER. During the past five years, an average of 15,559 males graduated from San Diego. See the table below:

	Year to date						
	FY12	FY13	FY14	FY15	FY16	FY17	TOTAL
Male	16,003	16,818	13,749	15,556	15,669	3,314	81,109

Data retrieved on 3/20/2017.

[The outside statement of John Rowan follows:]

VIETNAM VETERANS OF AMERICA'S STATEMENT FOR RECORD:

JOHN ROWAN, NATIONAL PRESIDENT AND CEO

Chairman McCain, Ranking Member Reed, Members of the Senate Armed Services Committee, we thank you for the opportunity to submit this statement for the record. Like everyone in this room, we are appalled by the events that brought us together for this hearing today. It's hard to imagine how someone in uniform could have so little respect for their colleagues and for their service that they would engage in this despicable campaign of cyber bullying. Yet, as the shock wears off, we are unsurprised by this ugly news. In 2014, an investigation by Task & Purpose revealed many of the exact same issues. The failure of the Department of Defense to respond appropriately back then only reinforced the behavior that was exposed again by the recent reporting by War Horse.

While it is necessary to devote significant attention to the bad actors in this scandal, we're calling Congress and on the Department of Defense to not only to focus on investigations of this behavior, but to make supporting victims their first priority when responding to "Marines United." Every servicemember and veteran who investigators can positively identify as a victim in this scandal should be informed of their full legal rights, provided appropriate psychological counseling and legal support, and should be guaranteed absolute protection from retaliation.

The War Horse and Reveal News recently uncovered a massive investigation into hundreds of marines who had shared explicit photos on the "Marines United" Facebook page, which has since been shut down. Days later, Task & Purpose, a military and veterans news and culture website has independently confirmed that veterans involved in the original "Marines United" page have uploaded a collection of the photos and videos to the website Pornhub. Thomas Brennan, a marine veteran, Purple Heart recipient, and founder of The War Horse has received threats after breaking the story on March 4. The Military Times has reported that this issue is not unique to the Marine Corps, and that other branches are initiating their own investigations.

While we welcome Secretary of Defense Mattis and General Robert Neller's condemnations of those involved in posting these photos and the tens of thousands of bystanders who condoned the behavior, we remain concerned that too little is being done to support the women who have been the victims of this outrageous behavior. Here's what these women need to know: First and foremost, we love and respect you. We in the community of military and veteran service organizations are here to support you now and forever. We'll be standing by organizations such as Service Women's Action Network and Protect Our Defenders who have been leading from the front in this battle against sexism in the military.

The Department of Defense needs to ensure that servicemembers know that the Department of Veterans Affairs offers free counseling for survivors of military sexual trauma (MST) regardless of whether or not that incident was reported while the members were on duty. We know that many veterans who reported MST in the past have received bad-paper discharges, and Congress, the Department of Defense, and the Department of Veterans Affairs must do more for them too. Veterans should know that anyone on Active Duty, and any veteran who has experienced MST can get counseling at Vet Centers across the country, regardless of discharge. The Department of Defense needs to include this information in their statements regarding this investigation.

To the servicemembers and veterans impacted by this scandal, our message is this: You are not alone. We're with you.

Next, we'd like to encourage the military to make full use of the Uniform Code of Military Justice in accordance with the actions of each individual involved in the "Marines United" Facebook page and any like it. The military has a history of taking shortcuts by issuing administrative discharges when justice demands more. We want to ensure that punishments for those involved are tailored to match the level of severity of each individual's actions. We ask that the Services utilize courts martial when appropriate, and that there is no discrimination by officer or enlisted status, by rank, or by time in service.

Recognizing that it is likely that some of those involved in behavior violating the code of conduct expected of servicemembers could be impacted by post-traumatic stress disorder or traumatic stress disorder, and that separation for those individuals may be likely, we urge the Services to consider the effect of a less-than-honorable discharge on the ability of these veterans to recover from the wounds of war. While many of those involved may be allegedly facing serious charges, we urge the

Services to consider forms of punishment, when necessary, that are appropriately harsh, but do not include a lifetime denial of healthcare. That is not to say that no servicemember guilty of serious misconduct deserves the harshest of discharges, but every veteran should have the right to due process by court martial before receiving such a punishment.

[The outside statement of Erin Kirk-Cuomo follows:]

WRITTEN TESTIMONY OF NOT IN MY MARINE CORPS, PRESENTED BY CO-FOUNDER ERIN KIRK-CUOMO, BEFORE SENATE ARMED SERVICES COMMITTEE, MARCH 14, 2017

Chairman McCain, Senators of the Committee,

Not in My Marine Corps (#NotInMyMarineCorps) is a group of dedicated Active Duty and veteran military members, joined together to advocate against sexual harassment and assault in the U.S. Military. This group exists as a vehicle for impacted servicemembers of all military branches to share their stories in an effort to shine a light on the pervasive conduct and attitudes that lead to such toxic behavior. We provide a platform of support, ways to report, mental health services, removal of unwanted content from the web, and legal services. We demand that all servicewomen, servicemen, and civilians receive the protections and respect they deserve, and no longer be subject to these demoralizing behaviors from fellow servicemembers which encourage rape culture and sexism.

The issues of nonconsensual photo sharing, reported for the past week by multiple news outlets, were not a surprise to women in the military. Women servicemembers brought sites with content like Marines United and Anon-IB to their leadership's attention for over a decade, and were told that the online issues were "too big to handle." These photographs were taken without our knowledge, stolen from our social media accounts, or shared beyond the original intended recipient, with the sole intent of exploitation, denigration, and ridicule. Women have been subject to surreptitious photo sharing within units and bases for far too long in ways that extend beyond social media. We have received many stories over the past week from describing instances of just this type. For example, a staff non-commissioned officer shared her story on condition of anonymity:

> *"I was at a senior enlisted (E–7) leadership school and was participating in outdoor team-building activities. Afterward, a male classmate . . . asked me if I knew about mind the gap. I said yes, and he said he planned to send in some photos he took from his work phone that day. I became alarmed, and went to the class leader (another male classmate) to confront the issue. I asked to see the photos, and discovered a . . . trove of sexist, racist, and generally offensive photos and memes - some saved from outside sources, and some obviously taken secretly including a photo of me taken without my knowledge, aimed at my upper thigh "gap" and other photos of female classmates' cleavage, etc. The class leader insisted the issue be squashed by simply deleting the photos, and it went no further. Since the photos weren't deleted in front of me, I fear they could be on MU, AnonIB, or similar site."*

Stories like this prove that women in the military are not given a buffer due to rank and its privileges.

Marine Corps Commandant General Neller said last Friday, "the only way we can fix this is if someone comes forward and tells us what happened to them." We have been coming forward for years. When we came forward we were continually dismissed. We were told to grow thicker skin and suck it up. This is a boy's club—and boys will be boys. As a response to reporting, we were simply given a forced apology as a form of punishment for the perpetrators. At worst, we were labeled with derogatory terms for reporting, ostracized from our units, and forced out of potential life-long careers in the Marine Corps simply because we spoke up.

> *"When I was stationed in 29 Palms, I was hanging out with a few NCOs and we were all having a good time and having some drinks. I consensually had sex with one of them. I found out . . . his roommate video-taped what happened. He bragged about it. I had to confront him and threaten to tell. I hated having to pull that card and potentially ruin his career, but they forced my hand by putting me in that situation. The Sgt cried and apologized. Destroyed the footage in front of me. Thank God it was in the early 2000s before camera phones and youtube. Thank God I was able to stop it from ruining my career, and his for that matter. He claimed he didn't know his roommate taped us. Maybe that's true, maybe not. I don't care either way. It angers me that even when I thought I was in control of myself and*

making a consensual decision, there was another male who sought to take control of the situation and exploit me."

It is not popular to speak truth to power when the message points the finger of culpability right at the top of the proverbial totem pole. It's nearly impossible to feel safe enough to make a report when the ones accused are in your chain of command. The 2014 Sexual Assault Report from RAND shows that of the total reports made by female servicemembers, 67 percent of offenders were of higher rank, and 58 percent were a unit leader/supervisor. Not In My Marine Corps believes senior female staff non-commissioned officers and commissioned officers must take a greater role and have an open door policy for reporting sexual assault and harassment. The chain of command has failed and continues to fail those victimized by sexual assault and harassment.

Since the Marines United story broke last week, military and legislative leaders have acknowledged the need to address the issues of punishing online sexual harassment. There is no substantive or comprehensive federal law that would punish the actions of those involved in Marines United, Anon-IB, or similar sites. We are calling for legislation that makes it a federal crime to distribute a private, visual depiction of a person's intimate parts, or of a person engaging in sexual act, with a disregard for a person's lack of consent to the sharing. We also believe an amendment to the Uniformed Code of Military Justice is necessary to specifically address punitive liability for actions of non-consensual pornography and exploitation, regardless of the means (social media, text message, e-mail) used to distribute.

Not In My Marine Corps requests that all votes on the Department of Defense non-civilian nominations, or general officers, be suspended until every submitted candidate is on the record pledging support to make the issues surrounding the Marines United and Anon-IB nonconsensual photo sharing a priority. These candidates must strongly state their commitment to thoroughly investigate, across military branches, the issues of nonconsensual photo sharing, harassment, assault, exploitation, and online harassment by servicemembers and veterans. We request their support for an amendment to the Uniform Code of Military Justice to specifically address nonconsensual photo sharing, online harassment, and rape culture language as recently revealed on sites like Marines United and Anon-IB. Furthermore, we request that all future Marine Corps general officer candidates state their dedication to ending gender segregation in Marine Corps basic training, as this practice lays the foundation for the actions and attitudes appearing on Marines United and similar sites.

We believe the culture of the military must fundamentally change in order to provide a safe work environment free from harassment and assault, and an end to the mentality in which women are considered inferior. We believe this is a battle that can and will be won; as female marines, we are accustomed to fighting uphill battles. General Robert Neller expressed a sentiment on Friday during his press conference that women in the Marine Corps have been feeling since our introduction to the Corps. "We have been fighting for 15 years, men and women side by side. (. . .) So what do you have to do to get in? What do you have to do to get in?" Women have fought and bled on the front lines of this country's wars dating back to 1812 when Lucy Brewer disguised herself as a man named George Baker and served as a marine aboard the USS *Constitution.* Since that day we have been fighting not only for our country, our Corps, but also for acceptance. We wait for the day when the quote by LtGen Thomas Holcomb, 17th Commandant of the Marine Corps, finally rings true for all marines. "They (women marines) don't have a nickname, and they don't need one. They get their basic training in a Marine atmosphere, at a Marine Post. They inherit the traditions of the Marines. They are Marines."

Signed,

Erin Kirk-Cuomo, Co-Founder, Veteran United States Marine Corps
Lisa Gleason, Co-Founder, Veteran United States Marine Corps
Jennifer Esparza, Co-Founder, Veteran United States Marine Corps
Sara [redacted], Co-Founder, Active Duty United States Coast Guard

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