

Office of the Naval Inspector General

NIGHTS Case Number: 201001885

Report of Investigation

10 March 2011

ALLEGED IMPROPER CONDUCT BY THE LEADERSHIP OF VFA-136

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Preliminary Statement

1. In this report we examine conduct during and after a Call Sign Review Board (CSRB) held in the Ready Room of Strike Fighter Squadron 136 (VFA 136), Naval Air Station Oceana, Virginia on 17 August 2009. We find that the [b7c] [b7c] and the Executive Officer (XO), who both participated in the Board, failed to perform their leadership responsibilities under SECNAVINST 1620.2A, Department of the Navy Policy on Hazing, 15 July 2005, because they did not immediately halt the discussion and assignment of call signs that were degrading and embarrassing to squadron personnel during the CSRB.
2. We also examine this conduct under OPNAVINST 5354.1F, Navy Equal Opportunity (EO) Policy, 25 July 2007. Giving the benefit of the doubt to the testimony of most participants in the CSRB, we find the discussions during the CSRB itself consisted of "yellow light" comments that did not require immediate cessation under the provisions of that instruction. We also find, however, that when coupled with conduct occurring after the CSRB, the [b7c] and XO permitted sexual harassment in the form of a hostile working environment, thus failing to perform their leadership responsibilities under OPNAVINST 5354.1F.
3. This report results from a reinvestigation of an Inspector General (IG) inquiry conducted by the Commander, Naval Air Force, U.S. Atlantic Fleet (COMNAVAIRLANT) IG that was reviewed and approved by the Fleet Forces Command (FFC) IG and endorsed by COMNAVAIRLANT under NIGHTS Case Number 200100263. Related cases include 201001874, which examines the reasonableness of the COMNAVAIRLANT response to his IG's report, and 201001894, which addresses an allegation of reprisal arising out of events discussed in this report.
4. The COMNAVAIRLANT IG formulated and investigated 19 allegations based on a complaint made by ENS Steven Crowston, USN, in February 2010 and conversations she had with him to clarify the issues raised in his complaint. She substantiated

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four of those allegations. We reinvestigated all of those allegations, but in this report we only address four that pertain to the squadron ~~b7d~~ and XO; we have addressed the other allegations through the Hotline Quality Assurance Review process. Pursuant to our authority under the Defense Hotline Program, and as the senior Inspector General office within the Department of the Navy, where we disagree with the findings or conclusions of the COMNAVAIRLANT IG, we substitute our findings and conclusions for the COMNAVAIRLANT IG report. Appendix A contains a summary of the original complaint submitted by ENS Crowston and a list of the allegations investigated by the COMNAVAIRLANT IG that contains findings and conclusions with which we agree.

#### Statement of Allegations and Conclusions

5. This report examines the following allegations:

a. Whether ~~b7c~~, and CDR Damien Christopher, USN, XO, VFA-136, failed to halt and consequently condoned the hazing of their subordinate officers during a call sign review board, in violation of SECNAVINST 1610.2A, DON Policy on Hazing (we conclude this allegation is substantiated);

b. Whether ~~b7c~~, and CDR Damien Christopher, XO, VFA-136, improperly permitted sexual harassment in the form of a hostile working environment, in violation of OPNAVINST 5354.1F, Navy Equal Opportunity (EO) Policy, 25 July 2007 (we conclude this allegation is substantiated);

c. Whether ~~b7c~~, improperly authorized a subordinate to combine special and holiday liberty in violation of DoD Instruction 1327.06, Leave and Liberty Policy and Procedures (we conclude this allegation is substantiated);

d. Whether ~~b7c~~, approved the improper use of rental cars by command members on liberty while deployed to Fallon, NV, in violation of the Joint Federal Travel Regulations (we conclude this allegation is substantiated).

## Allegation One

That [redacted] b7c [redacted], and CDR Damien Christopher, XO, VFA-136, failed to halt and consequently condoned the hazing of their subordinate officers during a call sign review board, in violation of SECNAVINST 1610.2A, DON Policy on Hazing.

### Findings of Fact for Allegation One

6. On 19 April 2009, ENS Crowston reported to VFA-136 as the Squadron Administrative Officer and Legal Officer. On 1 May 2009, [redacted] b7c [redacted] assumed [redacted] b7c [redacted] of VFA-136 and CDR Christopher reported as his XO.

### The Call Sign Review Board

7. Naval Aviation call signs may be divided into two categories. The first includes call signs used to identify aircraft or flights during operations. The use and assignment of these call signs is well structured and covered by various Navy instructions. The second category includes the individual aviator call sign referred to in this report. Although not officially recognized or assigned, these aviator call signs can be used between aviators airborne. Aviators often receive call signs from their peers based on their names, appearance, individual traits or experiences in the unit. Lists and examples of call signs may be found on internet websites. Many call signs are intended to be humorous. While some call signs may be considered derogatory, they are usually given in a manner to sound benign to the general public. One technique is to use an acronym to describe an aviator's demeanor, significant event or appearance. A Call Sign Review Board (CSRB) is an informal mechanism used in some aviation communities, including some naval aviation squadrons, to assign call signs to squadron officers.

8. On 13 August 2009, ENS Crowston received several e-mails addressed to a junior officer distribution list on which he had been placed. Several of the e-mails provided links to what he considered to be inappropriate websites.

9. Also on 13 August 2009, ENS Crowston was copied on an e-mail from the XO to a prospective officer stating, "... Also cc'd is our Admin O, ENS Steve "Cowboy" Crowston ...". When ENS Crowston responded to the XO he asked if "Cowboy" was going to be his call sign. His signature line read: "Ensign Steve "Cowboy" Crowston ... How 'bout them Cowboys! Jimmie Johnson 1989 -

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1993." After this e-mail, the word "Cowboy" was deleted from his signature line. The XO responded, "... unless there is a better call sign out there."

10. On 17 August 2009, VFA-136 held an All Officers Meeting (AOM) that [b7c] called for the purpose of boosting morale. At the end of the meeting, held in the Ready Room with [b7c] and CDR Christopher seated to one side of the group, squadron members convened a CSRB to vote on call signs for new members. A junior officer who acted as the CSRB Chairman (CSRB Chair) told investigators that [b7c] was unaware of the CSRB until the CSRB Chair asked him after the AOM if it was okay to hold the CSRB. [b7c] told investigators he was surprised by the scheduling of the CSRB, which resulted from his request that the CSRB Chair find ways to improve morale as the officers had been working extremely hard and a recent pilot safety survey indicated declining morale.

11. Neither the [b7c] nor the XO moderated or spoke at the CSRB, but they remained throughout the event. At the CSRB, several officers received new proposals for aviator call signs. All officers in attendance, including [b7c] and CDR Christopher, voted on the call signs, and neither [b7c] nor CDR Christopher attempted to stop the discussion or voting.

12. The proposed call signs were recorded on a white board that displayed the names of all officers who were to receive call signs. When first displayed, the white board already contained call signs that had been proposed before the CSRB started.

13. Call signs proposed for ENS Crowston included several containing homosexual connotations, such as "Fagmeister," "Gayboy," "Cowgirl," and "Romo's Bitch." ENS Crowston perceived these call signs as innuendos that were discriminatory and questioned his sexual orientation. Other proposed call signs for ENS Crowston included "Texas," "Cowboy," and "Dallas." ENS Crowston was ultimately assigned the call sign "Romo's Bitch" (abbreviated to ROBI). Call signs of a demeaning sexual nature, such as Dick Face (D-Face), Tiny Douchebag (Tiny-D), and Gay Fonzi (Gonzi), also were proposed for other officers attending the CSRB. ENS Crowston did not openly object to the discussion or assignment of any call signs during the CSRB.

14. The majority of VFA-136 officers present at the CSRB who were interviewed during this investigation remembered proposed call signs for ENS Crowston included "Fagmeister," "Gayboy," "Cowgirl," and "Romo's Bitch;" with "Romo's Bitch," receiving the majority vote and becoming the winning call sign. They also

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recalled other proposed call signs, such as "Cowboy," "Dallas," and "Texas." These officers' accounts of how the CSRB unfolded and who received what proposed call sign names were consistent and similar. The officers could not state who wrote the names on the board since most of the officers thought the names were already written on the board prior to the start of the CSRB.

15. When interviewed, [b7c], the [b7c], acknowledged he recognized the CSRB was becoming problematic while he watched:

... six officer's names were on the board with a list of five-six potential call signs listed directly below their names. Four of the officer's had at least one call sign option that included a derogatory homosexual reference ... the homosexual language was what struck me and was what I made a note that I needed to address ...

16. But [b7c] also told investigators:

... at the time, I was not struck by the impropriety of the call signs. By standards I had witnessed in the past this was a "fairly tame" set of call signs ... I took ENS Crowston's heavier percentage of homosexual related call signs as a sign of a lack of creativity on the part of the junior officers rather than a personal statement regarding ENS Crowston and, certainly, at that moment had I thought anybody had been either transmitting it or receiving it in an insulting way, I would have stopped it without a doubt.

17. A more extensive recitation of the [b7c] interview and subsequent written submission appears in Appendix C.

18. CDR Christopher, the XO, recalled the reason for the AOM was to discuss matters relating to an upcoming deployment to Fallon, NV. After that discussion, the CSRB Chair started the CSRB by sliding the white board to one side to display a list of the names of officers who had recently reported to the squadron and had not yet been given call signs. A number of suggested call signs for these officers appeared by their name. CDR Christopher also had not known the CSRB would be part of the meeting, but assumed others did know of it because of the advance preparation shown by the information on the white board.

19. As soon as CDR Christopher saw the suggested or proposed call signs, he realized some were inappropriate:

Immediately, I recognized several inappropriate call signs on the board. Primarily, sexual orientation related, there were probably four. Three or four of the individuals that were listed on the board, I made a mental note of this, and

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immediately following the AOM/CSRB, which was unknown to [redacted] b7c and I that the CSRB was going to happen. That was the first knowledge we had of it was when [the CSRB Chair] slid the board to the side.

As soon after the board flipped back, I thought, Hmm, I haven't been in the squadron very long. I'm not really sure how these call-sign review boards go, but maybe I'm overly sensitive after working on Capitol Hill. I also relayed a story to the rest of the (inaudible) room two days later when we had an AOM to address issue that after having a sign burn up from my house when my wife ran for office as a minority, I'm pretty sensitive to intolerance. And--so soon after the board went--slid back, I took a mental note and--all right, I'm going to need to talk to SEAL [redacted] b7c Call Sign] about this incident.

20. CDR Christopher explained that to him, an inappropriate call sign was something whose meaning squadron members could not explain to their mothers or to people who saw it painted on squadron aircraft. When explaining why he found the call signs proposed for ENS Crowston offensive, CDR Christopher stated:

Well, I'm not going to paint that on an airplane, for one, ... Two, I started - immediately started - to wonder if there was [some] kind of issue going on behind the scenes between the JOs and this guy, and the department head and this guy which I later found out (inaudible) bouncing information between this and that effect. So I didn't think it was in good taste. I didn't think it was in the spirit of what the call signs were supposed to be. And I wasn't going to -- truly wasn't going to - recommend to the [redacted] b7c that any of those call signs get painted on the jet. That's my - that's kind of my - trigger point for what an appropriate call sign is.

21. CDR Christopher explained that he did nothing to address the call signs he believed were inappropriate while the CSRB was taking place because:

... I'd only been in the squadron a couple of months at that point. And I took it all in, looked around the room, noted that seemed to be normal behavior or at least attempting behavior by most of the individuals in the room who I -- and to that point I hadn't really fully developed relationships with. And in retrospect I regret that I didn't just all stop, but I did what I thought was appropriate and that was immediately following the call-sign review board [I would follow the] [redacted] b7c back to his office and tell him what I thought.

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I followed him to his office immediately after the call sign review board, closed the dcor, and I said, "Skipper, I'm not sure if it's my place here but I'm not comfortable with what just went down in the [ready] room. I think you're going to need to take action and here's why." And I told him I might be overly sensitive maybe after working on Capitol Hill and watching my wife run for office and other things that I've seen happen, and the current environment in the Navy, but beyond all that, it's just not right what just went down in the [ready] room. Do you agree? And he agreed to conduct an AOM. We had a lot going on that week, so the first opportunity we really had to get all officers back into the [ready] room for an AOM was 20 August -- three days later, I think it was a Thursday.

The AOM was specifically to address what happened at the call-sign review board, what was inappropriate, and what was to be tolerated and not tolerated in the command specifically. That was the only topic at that AOM. But we both ([redacted] b7c and CDR Christopher) agreed that there was more than just ENS Crowston with -- there was more than just -- there were more offensive call signs up there than just ENS Crowston. I think it would have been more detrimental to his acclimation into the [ready] room if we singled him out, for the reason we're calling an AOM. So we purposely talked about every call sign that was up there that we could remember, because it got erased before we could even go back to the [ready] room. Every call sign that was up there that was potentially offensive we brushed it, if you will.

22. The CSRB Chair facilitated the CSRB proceedings. He recalled that one of the call signs proposed for ENS Crowston was "Gay Boy." His statement to the investigators provides insight into the thinking of the junior officers participating in the CSRB:

The [redacted] and XO -- I don't know where they were sitting. Typically, they sit on the couch in the middle of the room. They open the doors to the dry erase board and ask for any little last minute additions or thoughts or names. We'll start left to right and I think we started with one of the newest guys who hadn't even shown up to the squadron yet. Hey what are we going to call the new guy kind of review and we'll go down the list of names that are on the board. Do you have any additions to this person's name? And I think it was [another junior officer]; do you have any additions to his call sign review board? Yes, no, okay, write them down and then you go down the list.

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All right, any votes for whatever the names are? I can't remember what they were. There were probably ten or twelve names at least depending on how many people you have. If there are one or two people then the list could be a hundred long. People just have fun with it and come up with really stupid names to be honest because they are actually never going to consider some of these names. But people are trying to get a cheap laugh, an immature laugh, so they're on there and you go down the list and you just vote. You would say hey this name, no, this name? Okay, there's a few for this. And then you get to the top three or so and then you take a formal vote, you know, yeas or nays and then you come up with whatever the name was. And [one officer's] name I know was dick face and that was, you know, out of pure immature comedy. But for whatever reason his call sign to this day is face because he was so, you know, without hair it seemed. He was just happy to have a name I guess. But anyway, so he embraced his welcome into the squadron and then we went to the next guys.

There were a couple of guys who had been there for about a year and had some name changes and thought maybe they wanted to change their call sign. Again, they don't really have a say in the matter but some other people can suggest hey, I think we should change so and so's name because of what happened here and what he did this night or whatever. And then you would write the suggestion down and then we would all vote on it.

So that would go around and we did ENS Crowston's name and I remember, because it has come up on a few different occasions on the inspector general report or investigation. Yeah, the IG investigation, it came up during that and then of course immediately following, the next day I believe, or if it wasn't the next day it was that day, the ~~EA~~ talked about that. So I remember a few of the names that were written down. One of the ones that was especially egregious was fagmeister and I don't remember who put that down. It wasn't myself but it was a name that was written up there or somebody had shouted it out and it had been written up there or whatever. But we went down most of that list and what we ended up settling on was Robi, which was an acronym, kind of a half acronym that somebody came up with which stood for he was a Cowboy's fan, a Dallas Cowboys fan and he still is a Cowboy's fan. And it stood for Tony Romo. It stood for Romo's bitch, Romo b-i-t-c-h, and it was shortened to Robi. I don't know why that was funny but it was very popular and everybody voted on it and then that was it; so from there on out he was known as Robi and that's how that went. So that's kind of a shortened version because that's about as many details as I can remember on that.

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## Aftermath of the Call Sign Review Board

23. After the CSRB, ENS Crowston sent e-mails to close friends recounting what happened during the CSRB. ENS Crowston also met with CDR Christopher the day of the CSRB and told him that he was "offended" and "wronged" by what transpired at the CSRB. ENS Crowston said he believed he was owed an apology. ENS Crowston recalls that CDR Christopher told him, "the call sign review was meant to be fun and no harm was intended." The next morning CDR Christopher met with ENS Crowston and told him that he had discussed ENS Crowston's concerns with [redacted b7c].

24. At various times after the CSRB, some of the junior officers told ENS Crowston that the conduct at the CSRB was typical of the behavior in squadrons and done to everyone. Three days after the CSRB, on 20 August 2009, [redacted b7c] called another AOM in order to address ENS Crowston's concerns. He gave a speech about "old school mentality in the Ready Rooms," explaining this old school mentality was extremely hostile to the presence of women. He used the example of an officer who experienced a form of institutional intolerance toward women during Tailhook and also discussed the pressure this created for Navy leaders to rapidly integrate squadrons with female fighter and attack pilots. This led to his discussion of the death of the Navy's first female F-14 fighter pilot, and his belief that this death had its roots in institutional intolerance for women.

25. [redacted b7c] then proceeded to discuss the Navy's "Don't Ask, Don't Tell policy" and how it was "on life support." Finally, he told his wardroom that there were probably members of his squadron who were homosexual and that was okay. He is quoted as saying, "They are Hawks, they are my Hawks and I am committed to providing an environment where they can serve and reach their utmost potential free from hostility and marginalization." [redacted b7c] specifically used this forum and approach to address the inappropriate conduct that took place at the CSRB and following his address he considered the matter closed.

26. The CSRB Chair offered the following information about events that occurred shortly after the CSRB:

I don't know if it was that day or the following day. I believe it was the following day. [The [redacted b7c] sat me down in his office and we talked and he said hey, the names that we wrote on the board and everybody laughed and everybody voted, there was no one who was to be kind of you know, including myself -- Because I voted as well just like everybody else and everybody is a part of this and

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unfortunately if it's not -You know, some of the names that we wrote up there are not, although, you know, might be funny on a TV show, are not going to be funny written on the side of a jet and certainly we weren't going to let that happen. But we can't even seriously consider names on the board if we're not going to seriously write them on a jet.

And I agreed with that and he also mentioned that that is offensive to homosexuals. If you're going to write that on there, that would be considered an offensive term to homosexuals. And immediately I thought to myself wow, if ENS Crowston is a homosexual, I just offended him in a way I didn't ever, ever intend to harm, we intended no harm and no -- Which is interesting because I think the military is way behind the times when it comes to don't ask, don't tell and all of that. I think, you know, if we took kind of an informal discussion poll around the Ready Room and we said, you know I couldn't care less if someone were to come out and say hey I'm gay. I don't think it would affect our interaction one iota because I think all of us have grown up in different times now where we have friends who are out of the closet so to speak. So that was what my concern was is that I offended somebody in that way.

And he mentioned that hey, don't ask don't tell is going to change and I absolutely agreed and I said that is 100 percent right and we shouldn't even go there for fear of offending. You know the chances are somebody in that Ready Room is a homosexual to be honest with you. Just by sheer numbers it's probably the case and we just offended that one person and I had no, I didn't feel good about myself for sure just even being a part of it. I certainly didn't come up with those names but I was a part of it. I could have just taken my eraser and simply erased those names and I would have loved to go back in that time and done that. But that's what we talked about and I said got it 100 percent. Because when he was coming out of the tomcat there was a female pilot who, you know, I'll give you a long story real quick.

I immediately held a JOPA [Junior Officer Protection Agency]. I don't know how many hours later but it was that day, if I don't recall. Maybe it was the next, I can't remember. But it was hey, as soon as I could get a JOPA together we did and I talked to the guys and said hey listen, this is the deal. We may have offended him in a way that -- I actually grabbed Steve [ENS Crowston] in the hallway before the skipper grabbed me going back and I said hey Steve, could we talk for one second? And he said, you know; and he just stopped and didn't say anything. And I said I really feel bad about hurting you if that's what this did.

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I don't feel good about, and I'm paraphrasing here, but I didn't feel good about what happened and I certainly don't feel good if your reaction is thus.

And [ENS Crowston] said you know Blue, I don't care about this, I don't care about that. But what I do care about is being called gay, which was interesting to me. He said I don't like to be called gay and I thought wow, we certainly weren't calling you gay. We were just using that term as kind of a cultural, you know, it's like cultural words for you know -- You know what I mean? Just like hey, fag, that's certainly not a popular term anymore. But gay or those terms are not to be confused I don't think with most people like hey, that's gay. I don't think people are saying hey, we're calling you a homosexual. I don't think that's at all what we -- No one there, certainly no one there thought oh we're calling him, that we're actually confronting him about his homosexuality. No, that's not at all what we were saying. So when he said that I thought wow, you know Steve, we don't -- We didn't even get that far but I was just so floored that he thought we were calling him gay that we, well me, I was just kind of taken aback.

And the ~~577~~ then talked to me and then I talked to the JOs and I told them, you know, I just talked to the skipper and he gave this story and it may or may not correlate directly to this type of thing and it's kind of a stretch but hey, somebody died as a result of this. But I certainly agree with the fact that if a person feels that we're singling him out, because that's not what -- Because there were five or six people there getting their call sign review and we certainly weren't pointing at one person here.

Anyway, so I told them to reach out to [ENS Crowston]. There were many reactions of no, I will not reach out to him. I don't appreciate him doing this, going straight to the ~~577~~ and XO about a problem that all he needs to do is come talk to us about and keep it at the lowest level and we will deal with it together as a group. And I understand that logic, however it's already gone to the ~~577~~ and XO and it doesn't matter. We need to reach out to him and go above and beyond to bring him into the fold and bring him into feeling like he is a part of this squadron and befriend him. Right. Either way the names are offensive. If somebody's perception is that it offends them, it doesn't matter if you offended and don't feel you offended them. However they feel inside is all that matters; that's their reality. So if he was offended, boom, I offended you. There is no, I don't think I offended you. No, clearly I did and I, you know, realized it as soon as that took place. I get it. What I didn't understand at the

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time was what exactly was offensive, you know? Did we single you out? Was it because you have a strong affinity for Tony Romo? You really like him as an idol? I don't know what it was but it certainly wasn't that you thought that we were actually singling out as being a homosexual. That was not what we, certainly not what I got from that interaction. I do understand, however, that those names by themselves are offensive.

You know fagmeister in and of itself, would I be offended? No. He was offended; therefore, that word is offensive you know? I mean you can take offense to pretty much anything but it's really in the person. We didn't read him well enough to understand hey, you know, these words are not okay to just throw up and I kind of got that right away when the skipper talked to us. The initial words being up there, you know, people got a chuckle out of it and you know if -- I don't know if you were watching this on TV or something, I think a lot of people would feel the same way. Hey, I mean how far have we taken the PC attitude? And it's like well as soon as the majority of the people feel offended, if a small enough amount of people are going to feel offended then we need to stop doing that because it's offending some people. But we meant no harm by it. That's the difference in what we had written up there. At least that's what I felt. There was no maliciousness involved; there was no malice involved in the call sign review board. Just people trying to get cheap laughs and unfortunately, it was at the expense what some people consider an attack on them and that certainly wasn't the case. It was just people putting up stupid names for the fact that they're funny sounding names. But there was no malice attached, which is how we could consider it to be not offensive. But as soon as somebody does feel offended by it then game over. You know we have to then fix that problem.

27. On multiple occasions over the next five weeks, VFA-136 personnel sent inappropriate e-mails over the NMCI network to other squadron members or groups of squadron members. These e-mails ranged from sexual to religious in nature. As he became aware of the e-mails, ENS Crowston notified CDR Christopher of them. CDR Christopher responded by addressing the proper use of government computers at an AOM and through notices in the Plan of the Week.

28. ENS Crowston stated he was dissatisfied with CDR Christopher's response to what he viewed as a growing problem. According to ENS Crowston, this prompted him to write a letter to the b7c on 30 September 2009, quoted in Appendix A of this report. However, ENS Crowston's letter addressed only his

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dissatisfaction with the CSRB that took place on 17 August 2009, and the command's handling of that situation once he complained about it. After receiving the letter, [b7c] met with ENS Crowston and in essence stated that he had handled the situation when he addressed the wardroom at the AOM in August.

29. On 2 February 2010, ENS Crowston notified Congressman Glenn Nye and the COMNAVAIRLANT IG that he believed he was retaliated against after complaining of a hostile work environment based on perceived sexual orientation harassment. The basis of his complaint stemmed from the 17 August 2009 CSRB and subsequent events discussed in allegations one and two. ENS Crowston also alleged other improprieties, two of which are addressed in allegations three and four.

30. On 1 April 2010, the COMNAVAIRLANT IG concluded her investigation, which substantiated four of the 19 allegations investigated. Three substantiated allegations were for the misuse of government resources and one was for a violation of the Navy Equal Opportunity (EO) Policy. The three substantiated allegations for misuse of government resources involved violations of TAD travel regulations by [b7c] and two members of his administrative staff. The other substantiated allegation involved an inappropriate e-mail sent by a VFA-136 First Class Petty Officer that mocked a religion and offended another VFA-136 First Class Petty Officer.

31. On 15 June 2010, [b7c] issued ENS Crowston his annual Fitness Report (FITREP). ENS Crowston filed a complaint alleging reprisal under 10 USC 1034, the Military Whistleblower Protection Act. We investigated this allegation in Case Number 201001894 and found the FITREP was issued in reprisal for ENS Crowston's protected communications. The Department of Defense (DoD) IG, which has oversight responsibility for 10 USC 1034 investigations, concurred with our findings and conclusions.

32. On 9 July 2010, ENS Crowston contacted Senator Kay Bailey Hutchison and alleged that he was not satisfied with the Navy's handling his complaint of "anti-gay harassment and discrimination based on perceived sexual orientation." ENS Crowston alleged "the chain of command is unwilling to address the matter fairly and impartially" and the unsubstantiated findings in the IG investigation were "unacceptable," and "indicative of the prevalence and tolerance of harassment based on perceived sexual orientation that exists in the Navy, specifically at Naval Air Station, Oceana, Virginia."

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33. When Admiral (ADM) John C. Harvey, Jr., USN, Commander, U.S. Fleet Forces Command, learned of ENS Crowston's concerns, he reviewed the COMNAVAIRLANT IG report. His 19 July 2010 letter forwarding his review of the investigation appears in Appendix E. The following excerpts illustrate his concerns:

While the use of call signs is based on longstanding tradition in Naval Aviation, call signs (or the manner in which they are assigned) cannot be allowed to degrade our people or diminish the public's perception of our professionalism and commitment. ... Entrenched practices that do not value the contributions of all of our personnel must either change, now, or be discontinued ..I expect Commanding Officers to recognize the inappropriateness of a situation as it unfolds and forcefully interject their leadership in real-time, not after the fact. ... Similarly, I expect Commanding Officers to exercise good judgment and immediately terminate the use of call signs that are inappropriate on their faces. Finally, I expect Commanding Officers to exercise good judgment and common sense in all of their command's dealings, regardless of any advice they may or may not receive from their subordinates.

34. When NAVINSGEN learned of ENS Crowston's complaints about the COMNAVAIRLANT IG investigation, it reviewed the report and decided to reopen the case and reinvestigate.

**Applicable Standard - SECNAVINST 1610.2A**

35. The entire five page instruction may be found online at:

<http://doni.daps.dla.mil/Directives/01000%20Military%20Personnel%20Support/01-600%20Performance%20and%20Discipline%20Programs/1610.2A.pdf>

36. Paragraph 6 of the instruction defines hazing by stating:

a. Hazing is defined as any conduct whereby a military member or members, regardless of service or rank, without proper authority causes another military member or members, regardless of service or rank, to suffer or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to perpetrate any such activity is also considered hazing. Hazing need not involve physical contact among or between military members; it can be verbal or psychological in nature. Actual or implied consent to acts of hazing does not eliminate the culpability of the perpetrator.

b. Hazing can include, but is not limited to, the following: playing abusive or ridiculous tricks; threatening or offering violence or bodily harm to another; striking; branding; taping; tattooing; shaving; greasing; painting; requiring excessive physical exercise beyond what is required to meet standards;

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"pinning"; "tacking on"; "blood wings"; or forcing or requiring the consumption of food, alcohol, drugs, or any other substance.

c. Hazing does not include command-authorized or operational activities; the requisite training to prepare for such missions or operations; administrative corrective measures; extra military instruction; athletics events, command-authorized physical training, contests or competitions and other similar activities that are authorized by the chain of command.

37. The operative portion of the instruction applicable to commands such as VFA-136 appears in paragraph 7, which states it is DON policy that:

a. Hazing is prohibited and will not be tolerated.

b. No service member in the DON may engage in hazing or consent to acts of hazing being committed upon them.

c. No commander or supervisor may, by act, word, deed, or omission, condone or ignore hazing if they know or reasonably should have known, that hazing may or did occur.

d. It is the responsibility of every Sailor and Marine to ensure that hazing does not occur any form at any level. Every service member has the responsibility to make the appropriate authorities aware of each violation of this policy.

e. Commanders or individuals in supervisory positions are responsible for ensuring that all ceremonies and initiations conducted within their organizations or commands comply with this policy.

f. Supervisory personnel shall ensure that service members participating in command authorized ceremonies, initiations and other activities are treated with dignity and respect during these events.

g. Reprisal actions against any victim or witness of hazing incidents are strictly prohibited.

38. Paragraph 8 contains the accountability and enforcement provisions of the instruction and states:

The policies stated in paragraph 7 are regulatory orders and they apply to all DON military personnel conduct which occurs in, or impacts, a DON working environment. Any violation, attempted violation or solicitation of another to violate this policy subjects involved members to appropriate administrative action and/or the Uniform code of Military Justice (UCMJ), Art. 92 (failure to obey a lawful general order) and other UCMJ articles

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as they apply. This instruction is a lawful general order and it is effective immediately without any further implementation.

### **Analysis and Discussion of Allegation One Findings**

39. Hazing is most often thought of as conduct that involves the type of physical contact described in paragraph 6.b. of SECNAVINST 1610.2A. Yet the instruction defines hazing very broadly as "any conduct" that causes other military personnel "to suffer or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, or harmful" and cites several examples. While the majority of examples given in the instruction involve assault or physical contact, non-physical conduct is expressly included in the definition:

Hazing need not involve physical contact among or between military members; it can be verbal or psychological in nature.

40. Our legal research, which included inquiries of OJAG Codes 13 (Administrative Law) and 14 (Litigation), did not identify any cases of hazing that involved only verbal conduct. This is not dispositive, in our opinion, because of the likelihood that hazing consisting of non-physical contact would be handled at disciplinary procedures such as Captain's Mast that do not result in recorded legal opinions. We rely on the clear language of the instruction to conclude that non-physical conduct may result in hazing. To those who maintain there must be an element of physical contact for an act to be defined as hazing, we would reply that a fair reading of this instruction establishes a separate and independent duty to ensure that service members are treated with dignity and respect.

41. There are three elements of the VFA-136 CSRB that bring the activities that took place there within the behavior prohibited by the instruction: (1) the CSRB was a command event intended to build morale and esprit de corps by informally initiating the squadron's newest members into the Ready Room; (2) several call signs proposed for ENS Crowston and other subjects of the CSRB contained negative homosexual connotations, thus rendering them clearly inappropriate, particularly in the context of a command supported event; and (3) posting inappropriate call signs on a board under the subject's name served to denigrate, humiliate or embarrass the subject, and this effect was, or reasonably should have been, foreseeable and recognizable by a naval officer.

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42. The discussion section of SECNAVINST 1610.2A (not quoted in this report) emphasizes "ceremonies", "initiations" and "rites of passage" as beneficial, morale building military traditions that have the potential for hazing when the event gets off track and is conducted in a manner that is "degrading, embarrassing or injurious." The instruction cites several examples of such events, including, "[g]raduations", "chiefs' initiations", and "crossing-the-line ceremonies." While not as formal or structured as the listed examples, the VFA-136 CSRB fits within the type of morale building, command initiation event referenced in the instruction. [redacted b7c] stated that the purpose of the CSRB was to improve Ready Room morale and he thought it was important given the high operational tempo of the command. Under SECNAVINST 1610.2A, commanders are clearly responsible for the conduct of such ceremonies within their organization.

43. During the CSRB, [redacted b7c] and CDR Christopher both recognized that several proposed call signs were inappropriate. In his interview, [redacted b7c] said, "I recognized the names were inappropriate and that they had standard homosexual reference terms...some of these were over the top." CDR Christopher stated, "[i]mmEDIATELY, I recognized several inappropriate call signs on the board. Primarily, sexual orientation related ... I took a mental note [that] I'm going to need to talk to SEAL [redacted b7c] about this incident."

44. Proposing to identify ENS Crowston as "Fagmeister," "Gay Boy," "Cowgirl," or "Romo's Bitch" was objectively offensive regardless of the proponent's intent and while [redacted b7c] and CDR Christopher said they recognized the call signs were inappropriate, they both deliberately chose not to intervene, alter or stop the CSRB as it occurred.

45. Likewise, statements by some members of the squadron left investigators with the impression that they did not think the call signs proposed or assigned were inherently and objectively offensive. In part, they said they did not believe ENS Crowston was homosexual, as if this would make a difference. Some comments suggested that the "banter" taking place at the CSRB was typical of what might occur at a private sector college fraternity. Whether or not such conduct may be acceptable in other settings, it cannot be tolerated in a military environment that necessarily requires unit cohesion notwithstanding the increasingly diverse backgrounds of its members.

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46. By contrast, ENS Crowston was clearly upset by his treatment at the CSRB. He informed the XO nearly immediately that he was "extremely offended" by what had transpired and felt "humiliated and could not believe this was allowed to occur with the [redacted] b7c and Executive Officer present". In one of several e-mails ENS Crowston sent to friends and acquaintances shortly after the CSRB, he stated:

I felt pretty uncomfortable ... everyone was laughing and thought the nicknames were funny. It wasn't a good feeling at all. ... It's just really disappointing to me. ... It is the gay names that bother me.

47. ENS Crowston justifiably felt he was being labeled and mocked as a homosexual during the CSRB. Despite assertions from [redacted] b7c and others in the VFA-136 Ready Room that the proposed call signs were meant as a harmless joke and that ENS Crowston was not perceived as a homosexual, it was eminently foreseeable that ENS Crowston would feel that his sexual preference was being questioned and/or ridiculed at the CSRB. Moreover, the squadron members should have been reasonably anticipated that ENS Crowston would feel demeaned and humiliated for being called out in front of the Ready Room in such a fashion.

48. But, for the purpose of SECNAVINST 1610.2A, the subjective intent of squadron members and the personal feelings of ENS Crowston do not matter. In contrast to the EO instruction discussed in allegation two below, which includes the concept of "yellow light conduct," SECNAVINST 1610.2A expressly states that "no service member ... may consent to acts of hazing being committed upon them."

49. While the CSRB was not as severe as most of the hazing examples cited in the instruction, it falls within the standard of "cruel, abusive, humiliating, oppressive, demeaning, or harmful" behavior forbidden by that instruction. Although there is no evidence to indicate [redacted] b7c and CDR Christopher suggested, wrote, endorsed, commented on or voted for any of the call signs with homosexual connotations proposed for ENS Crowston or the other officers under discussion, they had a duty to stop that improper discussion. By failing to stop the hazing, they condoned it. Indeed, one reasonably could conclude they participated in the hazing by voting on call signs, even if they voted only for inoffensive call signs.

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50. SECNAVINST 1610.2A contains clear and express language stating that commanders and supervisory personnel must ensure hazing does not occur within the command and that they must be especially vigilant to this potential during command supported ceremonies and initiations. Paragraph 7, subparagraphs c, e, and f, of the instruction states:

a. No commander or supervisor may, by act, word, deed, or omission, condone or ignore hazing if they know or reasonably should have known, that hazing may or did occur;

b. Commanders or individuals in supervisory positions are responsible for ensuring that all ceremonies and initiations conducted within their organizations or commands comply with this policy;

c. Supervisory personnel shall ensure that service members participating in command authorized ceremonies, initiations and other activities are treated with dignity and respect during these events.

51. Under SECNAVINST 1610.2A, [b7c], as the [b7c], was ultimately responsible for the conduct of the CSRB. Simply put, [b7c] did not ensure ENS Crowston and others were treated with dignity and respect during the CSRB. His failure to intervene when inappropriate call signs were presented ignored their degrading nature and condoned their use. He did not carry out his responsibilities under SECNAVINST 1610.2A and consequently he violated the instruction. [b7c] subsequent address to the Ready Room three days after the CSRB served to mitigate his failure to act at the CSRB, but it could not and did not prevent or overcome the violation.

52. CDR Christopher, as the XO, clearly was a "supervisor" within the meaning of SECNAVINST 1610.2A. But while CDR Christopher's duty to ensure the CSRB's proper conduct was similar to that of the [b7d], it was not identical because the [b7d] was himself present during the CSRB. We believe the duty to affirmatively prevent hazing or other disrespectful conduct imposed upon supervisors by the instruction is intended to apply to those situations where the [b7d] is not present during the proscribed conduct. When the [b7d] is present, we believe a fair reading of the instruction imposes upon supervisors the duty to alert the [b7d] to the perceived violation and recommend the [b7d] take appropriate action. This interpretation of the instruction serves to preserve good order and discipline, respects the chain of command, and acknowledges the [b7c] ultimate responsibility and authority to decide how to handle a situation.

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53. In this case, CDR Christopher recognized the inappropriateness of the offensive call signs, but deliberately chose to wait until the CSRB concluded to address the issue with [b7c]. CDR Christopher's failure to address the inappropriate call signs with the [b7d] during the CSRB violated his duty as a supervisor under SECNAVINST 1610.2A. As with [b7c], CDR Christopher's actions subsequent to the CSRB served to mitigate his failure to raise the issue "real time", but they do not eliminate the SECNAVINST 1610.2A violation.

#### Conclusion for Allegation One

54. The Allegation against [b7c] and CDR Christopher is substantiated.

#### Allegation Two

That [b7c], and CDR Damien Christopher, XO, VFA-136, improperly permitted sexual harassment in the form of a hostile working environment, in violation of OPNAVINST 5354.1F, Navy Equal Opportunity (EO) Policy, 25 July 2007

#### Findings of Fact for Allegation Two

55. The Findings of Fact for Allegation One are incorporated.

56. ENS Crowston recalls that during the 20 August 2009 "AOM," CDR Christopher "recommended that anyone present who thought they might have offended someone apologize to that person." ENS Crowston told investigators he subsequently "received an apology from only one of the officers involved, who apologized even though he was not directly responsible for recommending the inappropriate names on the board."

57. ENS Crowston recalls that other squadron members told him the conduct at the CSRB was "typical behavior of squadrons and that this is done to everyone. ... I was ... told that I should feel privileged that I was even considered for a call sign since I am not an aviator." Moreover, he asserted that after the AOM "objectively offensive jokes have been made, inappropriate comments sent through a government computer have been made, and I am not confident that everyone received appropriate or meaningful training from the AOM."

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58. On 8 September 2009, an e-mail was sent to the junior officers, as well as a couple of O-4 officers [the JOPA is limited to officers who hold ranks of O-1 through O-3], with a picture attached of a young woman with large breasts, whose breasts were mainly exposed.

59. On 18 September 2009, ENS Crowston approached CDR Christopher regarding his concerns of inappropriate e-mails and pornography being sent on government computers. He told CDR Christopher about an e-mail he received from a LT in the squadron in July containing the words "Mine doesn't want to make you throw up in your mouth as much as [b7c] did" and a link to <http://uncyclopedia.wikia.com/wiki/Feminism>. The e-mail signature included the call sign "Dicks.com." An e-mail from another LT contained the words "Vaginas require significant maintenance with specialized tools. Maintenance is typically conducted on a monthly basis. Should you note a string hanging from a vagina, your best bet is to leave it alone. Better yet, leave the woman attached to it alone as well."

60. ENS Crowston told investigators: "I stated to the EO I did not think signing off as Dicks.com as a call sign through a government e-mail account was appropriate, nor did I think making comments about strings hanging from vaginas through a government e-mail account was appropriate." More extensive excerpts from ENS Crowston's 17 August 2010 interview with IG investigators appear in Appendix B, and his 30 September 2009, letter regarding the CSRB incident to [b7c], sent via CDR Christopher, appears in Appendix A.

61. On 2 October 2009, ENS Crowston provided [b7c] and CDR Christopher with the 30 September letter, addressing his concerns with the sexual orientation harassment. ENS Crowston stated within an hour of forwarding the letter, [b7c] and CDR Christopher met with him. ENS Crowston stated:

The [b7d] talked primarily throughout the meeting as the XO took notes on a notepad. I felt intimidated throughout the meeting.

The [b7d] told me he was not going to mandate the officers responsible for recommending the gay call signs apologize to me and that if I felt offended, I needed to approach the junior officers and let them know that. He asked me if I was going to take this outside the command at that time, and I told him I was going to keep it within the Squadron and not report it outside the command.

62. On 5 December 2009, ENS Crowston and others were present at a bar - Sloppy Joes - in Key West, FL. ENS Crowston told investigators that he witnessed two LTJGs walk in as though they were imitating a homosexual couple. They had just left an officers' function with the [b7d] and XO present in which T-shirts had been exchanged. One LTJG was wearing a shirt that said, "I (heart symbol in rainbow colors) Key West." ENS Crowston told investigators "everyone knew this meant gay Key West. The other LTJG was wearing a shirt that rose above his navel and was very snug embracing his body."

63. [b7c] told investigators that the T-shirt game during the Key West Detachment visit in December 2009 was a bunch of his junior officers having fun buying each other outrageous T-shirts and that two of his junior officers were wearing T-shirts indicative of the alternative lifestyle in Key West, FL. He explained that his junior officers purchased the T-shirts for himself and the XO (CDR Christopher), but they declined to accept them. He could not remember what was printed on the T-shirts.

64. CDR Christopher recalled that during a Detachment to Key West, FL in the first week of December 2009, he saw squadron junior officers putting on different T-shirts. He said the T-shirts were goofy because they displayed "cuss words on them and some had homosexual connotations because of the community in Key West being a significantly homosexual community." CDR Christopher also recalled the junior officers offered the T-shirts to him and [b7c], which they declined because they did not think it was appropriate. Nor did he think it appropriate for the junior officers to wear the T-shirts, which he described as:

I can - the only two shirts that I can honestly remember were (inaudible) wearing a "I Love Key West" with a rainbow on it. And that's the reference - that's the homosexual reference, rainbow symbol. And then [a squadron member was] wearing this really tight lime, neon lime green shirt that would have fit my 13 year-old, maybe.

65. When asked, in light of the "Don't Ask, Don't Tell" policy, how he would respond to questions about allowing his subordinate officers to wear the T-shirts, he stated:

Well, there's a lot of things that could have been done differently over the course of his 16 months here in this command. I look back at that instance and I thought I gave the right signals. I thought I gave the right example by refusing and not getting - no participating in getting intoxicated and

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falling down drunk in public. And maybe I could have done a little bit more but I thought the role I was in as the XO, I acted appropriately.

66. CDR Christopher also told investigators: "[redacted b7c] is about as straight-laced a person as I've ever been around."

67. ENS Crowston described a pre-detachment brief for Fallon, NV, held on 29 December 2009:

[A squadron junior officer] got up in front of approximately 132 personnel, to include the [redacted] and the XO who sat on the front row, to begin the brief. On the very first slide were the words "A/G SFARP FALLON, LT [name omitted] "Dicks.com" [name omitted]. I could not believe I was actually reading an advertisement for what appeared to be a pornographic website at an official meeting for the command. What came to mind was the conversation I had with the XO on 18 September 2009, regarding Dicks.com as a call sign in an e-mail. It became apparent to me that the XO did not take care of things as he had stated to me he would on 18 September 2009. On 30 December 2009, I approached the XO and told him I was really surprised to see a porn site URL on the PowerPoint slide for the Fallon pre-detachment brief that was given to enlisted and officers. I stated to him I found this inappropriate and unprofessional. The XO said nothing about the porn site being advertised to the command and asked me if there was anything else. I told the XO I had nothing else and was dismissed.

68. Investigators questioned [redacted b7c] about an inconsistency in a statement that he had made to COMNAVAIRLANT IG concerning whether he saw "Dicks.com" on the PowerPoint slide that had been given by a junior officer as part of his brief to the squadron about the upcoming Detachment. [redacted b7c] told investigator he did not see the PowerPoint slide.

69. CDR Christopher stated that he was present for the PowerPoint presentation given by the junior officer in which the first slide of the presentation was signed as "LT "Dicks.com" [name omitted]," but that he never did see that on the slide.

70. [redacted b7c] stated that he and CDR Christopher counseled the officer about putting that call sign on first PowerPoint slide of his brief to the detachment.

71. [redacted b7c] stated that he was aware of the origin of Dicks.com and that the actual Dicks.com was a porn site, but said he had never visited the Dicks.com website to see exactly what the site portrayed.

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72. [b7c] stated that he told the junior officer that if he wanted to keep the Dicks.com call sign, he would "need to keep it in an abbreviated format so that people who don't understand the innocent nature, by which it was received, don't get the wrong impression...that we're advocating a porn site or something like that." When investigators asked why someone would be permitted a call sign such as Dicks.com, he stated:

... if something like that has an innocent origin, you know, it's tolerated as long as--again, as long as it's abbreviated such that people outside the Ready Room or the wardroom who know the origins of a call sign and know that they're innocent aren't offended and aren't exposed to something that they think is ridiculous. And ENS Crowston knew the origin for the call sign... The origin of the call sign is a guy trying to find a sporting goods store and instead finding a porn site.

73. CDR Christopher told investigators that he knew the officer's call sign was Dicks.com and he understood the derivation of that call sign was from an event that took place when the officer was in a public place and looking for the Dick's Sporting Goods website. He stated that apparently a bunch of embarrassing websites began popping up when he typed Dicks.com, and that people saw, from looking over his shoulder, what was popping up on the computer.

74. When investigators asked whether he had noticed a coffee mug hanging in the squadron spaces that read "Dicks.com," [b7c] stated that he did not know about the mug until February 2010, when someone told him that ENS Crowston was taking pictures of it on his cell phone. At that time, he told the officer to get rid of the mug.

75. [b7c] stated that he was not aware of an inappropriate e-mail thread until the COMNAVAIRLANT IG brought it to his attention during her investigation. He stated, "I was made aware in very general terms by ENS Crowston through the XO that there might be some inappropriate e-mails floating around amongst the JOPA."

76. [b7c] stated, "I also talked to some of the more senior JOs personally and said, 'knock that shit off,' because that is not professional. That's not--you know, it's not (inaudible). You've got to stop. You know, you've got your home e-mail; use your home e-mail for that stuff. It's not for the workplace."

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77. Both before and after [REDACTED] 20 August address, several inappropriate e-mails from VFA-136 personnel were sent over the NMCI network and shared among an informal VFA-136 junior officer e-mail distribution list that included members of the JOPA to which ENS Crowston, as a junior officer within the squadron, belonged. These e-mails contained sexually suggestive language/material or derogatory homosexual/religious references. ENS Crowston provided investigators the following samples.

13 August 2009 from a LT to JOPA:  
<http://uncyclopedia.wikia.com/wiki/Rocket> (no official purpose--reads about rockets).

13 August 2009 from another LT to JOPA:  
<http://uncyclopedia.wikia.com/wiki/Pony> (no official purpose--reads about ponies).

13 August 2009 from a LT to JOPA:  
<http://uncyclopedia.wikia.com/wiki/boobs> (depicts a cartoon image of oversized breasts, a movie video of a woman holding her large breasts circling her finger around her nipples, etc).

25 August 2009 from a LCDR to JOPA: "Thanks for making my day. Hope all you queers are doing well. If you were real men you'd be sitting in a cubicle instead of flying F-18's around. Later, ..."

25 August 2009 from a third LT: "Somebody didn't attend Homophobic Sensitivity Training. By the way, a cubicle would be a step up for Dix and me considering the size of Safety."

25 August 2009 from the first LT: "Maybe he's calling us queers as a compliment. Ever think of that Chubs ... or should I call you "Mr. Bigot?"

September 2009 from the second LT to two LCDRs and the JOPA  
RE: Motorboat w/ picture of large breasted woman.<sup>1</sup>

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<sup>1</sup> A Google search using the word "motorboat" resulted in numerous websites all describing "motorboating" as: "The act of pushing one's face in between two ample breasts, and rocking one's head side to side very rapidly while making a vigorous lip-vibrating "brrr" sound.."

25 September 2009 from the first LT to JOPA: I think someone just stepped outside the VFA-136 FCPO [First Class Petty Officers] circle of trust.

25 September 2009 from ENS Crowston to XO [in reference to a specific e-mail] stating: "XO, Legal Officer perspective ... this is starting to get out of hand."

25 September 2009 from ENS Crowston to XO stating: "XO, Recommend an all hands stand down to 'educate' all Hawks (officers, chiefs, E-6 and below on appropriate behavior as Sailors. There's too much 'I thought what I did or said was funny' going on around the Squadron. What's happened is Hawks have ended up becoming offended, and people should not come to work feeling [as though] they are subjected to hostile work environment. Top Navy Leadership has been pretty clear about what's acceptable and what's not."

26 September 2009 from XO to ENS Crowston: "Let's include a section on sensitivity training as well as appropriate use of government computers in next week's POW [Plan of the Week]. Thanks, XO"

2 October 2009 from ENS Crowston to [a friend] stating, "Can you believe this command??? Take a look at the below. The shit just continues here. Perceived homosexuals and Muslims have been targeted. What's next?...The XO's response to my e-mail was put a note in the POW regarding sensitivity training. Unbelievable.!"

#### Applicable Standard - OPNAVINST 5354.1F

78. The entire 46 page instruction may be found at:

<http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5354.1F.pdf>

79. Pertinent excerpts from the instruction appear in Appendix D. In this section, we summarize key concepts applicable to our findings of fact and analysis.

80. Paragraph 4 states discrimination and sexual harassment are contrary to the Navy core values of honor, courage and commitment and adversely affect good order and discipline, unit cohesion, as well as mission and operational readiness. An objective is to promote a positive command morale and Quality of Life by providing an environment in which all personnel can perform unimpeded by biases based on race, color ethnicity, national origin, sex, or religious stereotypes. Paragraph 4

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also requires that Command leaders create, shape, and maintain a positive EO environment through policy, communication, training, education, enforcement, and assessment.

81. Paragraph 6 prohibits unlawful discrimination and sexual harassment based on race, color, national origin, sex or religion, but goes on to state that all of the elements of the policy are gender-neutral concepts that are not dependent on the sex of the members involved. It then prohibits discrimination and sexual harassment that arise from a perception of sexual orientation or homosexual conduct.

82. Paragraph 7 requires that Commanding Officers: promote a positive command climate through personal example and ensure an effective system is in place within the command to resolve complaints of unlawful discrimination and sexual harassment at the lowest appropriate level. Paragraph 7 also requires that individual service members: treat others with dignity and respect; promote a positive command climate within the Navy through personal example; and be responsible and accountable for reporting acts of unlawful discrimination and sexual harassment. Paragraph 8 of the instruction makes commanders accountable for implementation and enforcement of the instruction.

83. Enclosure (1) to the instruction contains 33 numbered definitions. Pertinent definitions include paragraphs 19, 26, and 29, which state:

- a. Hostile Work Environment (an environment which prevents members from functioning to their full capacity, free of unlawful discrimination and sexual harassment and unreasonably interferes with an individual's work performance, although it need not result in concrete psychological harm; it is sufficient to be perceived by a reasonable person and the victim as hostile or offensive);
- b. Reasonable Person Standard (an objective test asking whether a reasonable third party would think the behavior offensive);
- c. Sexual Harassment (SH) (a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, among other things, the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive work environment. For military members, the workplace environment may include conduct on or off-duty, 24 hours a day and extends to any place that is work-connected including, offices building, bases, ships, aircraft or vehicles, anywhere when engaged in official DON business, and command-sponsored social, recreational and sporting events, regardless of location.

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84. Enclosure (2) to the instruction discusses SH guidelines and ranges of behavior. Paragraph 2 states that SH may consist of a wide range of behaviors that are unwelcome, sexual in nature, and connected in some way with a person's job or work environment. Subparagraphs provide amplifying information:

a. Sexual harassment is a gender-neutral concept; therefore, sexually harassing behaviors involving members of the same sex as well as those directed at service members on the basis of alleged homosexuality are prohibited;

b. For sexual harassment to occur, unwelcome sexual behavior must occur in or impact the work environment. When the unwelcome sexual behavior in a workplace interferes with another person's work performance, sexual harassment has occurred, but in addition if the behavior produces an offensive, intimidating or abusive work atmosphere, whether or not performance is affected, "hostile environment SH" has occurred.

85. Enclosure two, Paragraph 3, Range of Behaviors, introduces the "traffic light" SH analysis. Green light or "zone" behavior is not SH. Yellow zone behavior may be SH, and red zone behavior is always SH. Paragraph 3 provides examples of yellow zone conduct many people could find unacceptable and that could be SH. Examples include lewd or sexually suggestive comments; off-color jokes; foul language and unwanted letters or poems.

#### **Analysis and Discussion of Allegation Two Findings**

86. Using the OPNAV EO instruction as the allegation standard requires that the behavior of junior officers at the CSRB be analyzed for its effect upon the other participants, including ENS Crowston, under the traffic light concept. In contrast to the SECNAV hazing instruction, the CPNAV instruction contains no provision stating an individual may not consent to the conduct that is taking place. Indeed, the essence of sexual harassment is that it is considered harassing by someone.

87. OPNAVINST 5354.1F states "[c]ommand leaders must create, shape, and maintain a positive EO environment through policy, communication, training education, enforcement and assessment." This includes ensuring an environment free from Sexual Harassment. As the [redacted] b7c [redacted] was ultimately responsible for the EO environment at VFA-136.

88. At the CSRB, VFA-136 junior officers proposed multiple call signs with derogatory homosexual connotations and did so directly in front of command leadership. This was clear evidence of a deficient EO environment within the squadron.

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89. In our opinion, the conduct displayed at the CSRB is most appropriately classified as "yellow zone" behavior, fitting into categories such as lewd comments off-color jokes or foul language. Certainly, the language at the CSRB, as we have already pointed out, was disrespectful and demeaning. But, as the EO instruction notes, not all yellow zone behavior is sexual harassment. Under the hazing instruction the [b7d] and XO had a duty to stop this behavior immediately. Under the EO instruction, in the absence of any express statement of objection by a participant or the display of some other outward indication of discomfort, the [b7d] and XO could decide to address the inappropriate conduct after the CSRB was concluded.

90. The responsibility of the [b7d] and XO to take effective action changed immediately upon learning ENS Crowston's concerns, which he brought to the XO's attention shortly after the CSRB concluded. Whether or not ENS Crowston was a homosexual, the perception that the call signs proposed and assigned for him constituted sexual harassment was eminently reasonable. Thus, once ENS Crowston articulated his belief that he had been harassed to squadron leadership, his concerns required their immediate attention. They could not "ignore or condone" what ENS Crowston reasonably interpreted as sexual harassment based on a perception of his sexual orientation. After consulting with his XO, [b7c] made the appropriate decision to address the Ready Room on 20 August in an attempt to remedy the wrongs from the CSRB and to communicate his standard for appropriate behavior.

91. Some of the evidence provided to investigators about the AOM called by the [b7d] to address the conduct at the CSRB suggests it was a reasonable first step that satisfied ENS Crowston's concerns about harassment. Other evidence indicates ENS Crowston did not think the [b7c] response was adequate. We need not resolve any conflicts in the evidence that may exist about this because we find that various forms of harassing behavior continued for months, without effective action by the [b7d] and XO to stop it.

92. Both before and after [b7c] 20 August address, several inappropriate e-mails from VFA-136 personnel were sent over the NMCI network and shared among a VFA-136 junior officer e-mail distribution list. These e-mails contained sexually suggestive language/material or derogatory homosexual/religious references.

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93. [b7c] and CDR Christopher were present in December 2009 when a junior officer gave a PowerPoint presentation to all squadron personnel with his call sign, "Dicks.com", listed on the initial PowerPoint slide.

94. [b7c] and CDR Christopher were aware of the origin of this call sign and also were aware that "Dicks.com" referred to a pornographic website. [b7c] explained that so long as the name was abbreviated to "DDC" on the jet, it was okay to keep the call sign.

95. The transmission among squadron personnel of e-mails containing sexually suggestive language, sexually suggestive material, derogatory homosexual references, and derogatory religious references and the use of inappropriate call signs are reflective of an organizational climate where the junior officers believed such behavior was acceptable. That the practice continued after [b7c] 20 August address, indicates [b7c] approach and message proved ineffective as a remedy for the CSRB.

96. [b7c] and CDR Christopher were aware of ENS Crowston's complaint regarding inappropriate e-mails being transmitted by other officers in the squadron via government computers. [b7c] took no steps to investigate this and stated that CDR Christopher took action to address this problem.

97. [b7c] and CDR Christopher's inaction at the CSRB, their ineffective corrective action, and their inadequate response when squadron personnel transmitted several e-mails containing sexually suggestive language or material, derogatory homosexual references, or derogatory religious references over the NMCI network permitted sexual harassment in the form of a "hostile work environment" and violated OPNAVINST 5354.1F.

#### Conclusion for Allegation Two

98. The Allegation against [b7c] and CDR Christopher is substantiated.

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### Allegation Three

That [REDACTED] b7c, improperly authorized a subordinate to combine special and holiday liberty in violation of DoD Instruction 1327.06, Leave and Liberty Policy and Procedures.

#### Findings of Fact for Allegation Three

99. This allegation involves a squadron Senior Chief Petty Officer (the Senior Chief) who retired in April 2010. He planned, and was authorized, to take 88 days of terminal leave from Monday, 1 February 2010, to 30 April 2000, the date he was scheduled to transfer into the fleet reserve.

100. By the end of December 2009, the Senior Chief had already obtained a temporary home and temporary employment but he continued to look for a permanent, full time position and a larger home to accommodate a recent change in his family circumstances that required him to obtain a larger home.

101. The Senior Chief originally intended that his retirement ceremony would take place in early January. While the investigators were unable to determine that date, it may have been on or about Monday, 11 January or Tuesday, 12 January 2010.

102. When he learned that the squadron would be deploying to Fallon, Nevada on or about Sunday, 10 January 2010, the [REDACTED] b7d asked the Senior Chief to move his retirement ceremony date to Tuesday, 29 December 2009, in order that the squadron members could participate in the ceremony.

103. The squadron worked Wednesday, 30 December 2009. The Senior Chief performed duties connected with his impending separation from the squadron and, ultimately, retirement from the Navy. On that date he prepared and submitted a leave request for his terminal leave to run from 1630, 1 February to 1630, 30 April 2010. He also submitted a request for 20 days of Permissive Temporary Duty (PTDY) for the purpose of job and house hunting pending his retirement. He requested the PTDY run from 1630, Tuesday, 12 January 2010, to 1630, Monday, 1 February 2010, when his terminal leave would begin. The leave and PTDY request forms indicate that various people reviewed these requests on 5 and 6 January and recommended approved. The [REDACTED] b7d recommended approval on Friday, 8 January 2010, and the [REDACTED] b7d approved the request that day.

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104. The squadron had liberty for the New Year's holiday from Thursday, 31 December 2009, through Sunday, 3 January 2010. There is no evidence to indicate the Senior Chief reported to the squadron on Monday, 4 January, 2010, or any other day that week. ENS Crowston told investigators that at the end of the week, on 8 January 2010, he:

... sent an e-mail to the XO regarding a job/house hunting request by [redacted b7c]. I informed the XO we did not have a leave chit for [redacted b7c] for the first week in January 2010. His current status was not accounted for. I further told the Executive Officer [redacted b7c] was requesting permissive temporary duty (PTDY) authorization for job/house hunting leave. I knew [redacted b7c] had started a job locally on 4 January and already owned a home in the local area. After reviewing MILPERSMAN 1320-220 and doing some research, I informed the XO I believed his request to be suspect. The XO informed me in person that he and the [redacted b7d] were aware of the request and to let it go.

105. The XO told investigators he remembered being told the Senior Chief's last official day in the squadron was Tuesday, 12 January 2010. He recalled ENS Crowston sending him an e-mail concerning the Senior Chief's request for PTDY. He responded to ENS Crowston by asking what the "issue" was to which ENS Crowston stated the Senior Chief had started a temporary job on 4 January 2010 and already owned a home in the area and that ENS Crowston commented that the request "is suspect."

106. When investigators asked him for additional information about this matter, CDR Christopher responded:

The CMC informed [me] that [two other Senior Chiefs gave their 96-hour liberty passes (earned when they reenlisted on 14 December 2009 and 6 December 2009 respectively) to [redacted b7c] [redacted b7c]. The CMC told [me]: "It is common practice in this squadron for senior personnel to give their liberty pass to someone else of their choosing with [redacted b7d] approval; this liberty was for the week of 4-8 January 2010."

107. On 12 March 2010, the XO sent an e-mail to the COMNAVAIRLANT IG that contained the same information.

108. [redacted b7c] stated he was aware of [redacted b7c] personal circumstances in that he had a part time position and was looking for full time employment and a larger home to accommodate a family situation.

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109. [b7c] told investigators he had allowed senior [enlisted] personnel to trade reenlistment 96-hour liberty passes in the past, and stated in this instance he authorized the Senior Chief to use two such liberty passes consecutively in order to account for the period of time between 4 and 11 January 2010, the date on which the time covered by his home and job hunting permissive temporary duty orders started. Accordingly, he approved [b7c] request, either on paper or verbally.

110. The Senior Chief had retired from the Navy by the time NAVINSGEN conducted its inquiry, and NAVINSGEN Investigators did not interview him. Investigators were unable to obtain any evidence to demonstrate he ever reported in to the squadron at the end of his holiday liberty period, or at the end of either the first or second special liberty periods.

**Applicable Standard: DoDI 1327.06**

111. DoD Instruction 1327.06, Leave and Liberty Policy and Procedures, dated 16 June 2009, establishes the Leave and Liberty Policy and Procedures. Enclosure (2), paragraph 4, includes the following provisions:

**SPECIAL LIBERTY (PASS)**

a. Special liberty may not be used in combination with normal liberty, holidays, or other offduty periods where the combined periods of continuous absence would exceed 4 days (regarding leave, see paragraph 4.b. of this enclosure). Furthermore, special liberty may not, under any circumstances, exceed 4 days. Special liberty periods in excess of 2 days may only be granted for special occasions or under special circumstances, such as:

(1) Compensation for significant periods of unusually extensive working hours; long or arduous deployment from home station or port; duty in an isolated location where normal liberty is inappropriate; or to Service member's onboard ship in overhaul away from homeport.

(2) As special recognition for exceptional performance, such as Soldier, Sailor, or Airman of the Month or Year.

b. Special liberty may be taken in conjunction with leave without a duty day between the liberty and leave periods. The special liberty may be taken in accordance with the local commander's guidance and policies for special liberty, but requires a unit commander's memorandum authorizing the special pass. The member must be physically present at the home station

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or port when departing and returning from leave. If the member wishes to leave the home station or port during the special liberty period and not return prior to the beginning of the leave period, then the entire leave and liberty period will be charged as leave.

c. When, because of unforeseen emergency circumstances, Service members request an extension of an authorized period of special liberty that exceeds 4 days (original authorization and extension combined), the extension beyond 4 days shall be charged to the Service member's leave account.

112. The Military Personnel Manual (MILPERSMAN) 1050-280 and 1050-290 implement the Liberty provisions of the DoD instruction but add no additional restrictions.

#### **Analysis and Discussion of Allegation Three Findings**

113. ENS Crowston was not aware of the Senior Chief's personal circumstances that made it reasonable for the [b7c] to approve his request for PTDY. Both CDR Christopher and [b7c] knew the Senior Chief's personal situation and properly determined the member met the criteria for PTDY, which allows the [b7c] broad discretion. But, [b7c] then permitted the Senior Chief's peers to give him their two 96-hour liberty passes they received for reenlisting in order to fill the gap between the New Year's Day holiday liberty period, 31 December 2009 to 3 January 2010, and the start of his PTDY on 12 January 2010.

114. DoD Instruction 1327.06 specifically states that "[s]pecial liberty may not be used in combination with normal liberty, holidays, or other off-duty periods where the combined periods of continuous absence would exceed 4 days ... special liberty may not, under any circumstances, exceed 4 days." The Senior Chief violated the DoD instruction when he went on special liberty on 4 January without first reporting back to the unit when the New Years' Holiday liberty period ended. He violated the instruction a second time on 8 January when he again went on special liberty for four days without first returning to the squadron.

115. [b7c] did not have the authority to authorize filling the gap between the holiday and the start of the Senior Chief's PTDY with two consecutive 96-hour liberty passes without also requiring him to report into the unit at the end of each liberty period. Consequently, [b7c] violated the DoD Instruction when he approved the decision to use the two special liberty passes in that manner.

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### Conclusion for Allegation Three

116. The Allegation against [b7c] is substantiated.

### Allegation Four

That [b7c], approved the improper use of rental cars by command members on liberty while deployed to Fallon, NV, in violation of the Joint Federal Travel Regulations (JFTR).

### Findings of Fact for Allegation Four

117. The majority of VFA-136 personnel were on the Detachment to Fallon, NV, from 10 through 29 January 2010. A total of 23 rental vehicles were utilized during the course of the detachment (6 sedans and 17 mini-vans). Including members of other squadrons, approximately 700 people were on the detachment.

118. Reno, NV, is approximately a 1-hour drive from Fallon, NV. Internet searches for directions between hotels in Fallon and Reno suggest the two cities are about 65 miles apart.

119. In his written complaint, ENS Crowston stated:

During the week of 11 January 2010, I approached the [b7c] and XO to let them know personnel from the Squadron wanted to utilize the command's rental vehicles to drive from Fallon to Reno (about an hour drive) for pleasure. I informed the [b7c] and XO I believed this would need to be researched from the applicable United States Codes, DoD regulations, and the JFTR prior to approval. The [b7c] told me he deems what is authorized and not authorized at his command and that he was allowing his personnel to drive to Reno during off-duty hours in command rental vehicles.

120. CDR Christopher stated that when ENS Crowston approached him with his concerns, he agreed members could utilize a rental car to go to Reno, NV, if they purchased their own gas and there was no additional cost to the government.

121. [b7c] stated there was a discussion about the use of rental cars "in general terms" and what he had seen in the past. However, "I do want to be clear for the record that I did not specifically authorize use of rental cars for liberty. That topic was not addressed at all to the command or Wardroom."

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122. The JFTR is specific with regard to the use of rental vehicles being limited to "official purposes" to include transportation to "... dining facilities and similar places required for the traveler's subsistence, health or comfort." However, the JFTR is non-specific with regard to distances traveled to dining facilities and/or subsistence, health, or comfort.

123. The COMNAVAIRLANT IG sought the assistance of the COMNAVAIRLANT Travel Program Manager with regard to the use of rental vehicles while on travel. The COMNAVAIRLANT Travel Program Manager sought the assistance of the Chief of Naval Personnel (CNP) travel Subject Matter Expert (SME). The SME advised, "There is no definitive operating distance for the official purposes lists. This comes under the "reasonable person" concept. In practice, if someone drove a rental car 50 miles to a special restaurant, the question remains, why did you not use a restaurant that was close by? If the member still insists on using the car that way, is he at least paying the gas? Basically, we are seeing a misuse of the car, but then again everyone has done it, those who are honest just don't claim the gasoline and tolls." The SME noted that the Vice Chief of Naval Operations requested he take steps to eliminate the (JFTR paragraph) U3400-G list of destinations because, legally, the rule was not enforceable in court. The SME explained the new policy would have been to tell the member they are responsible for the rental car for any personal missions and must cover any expenses themselves. The SME said that the Navy was the sole supporter to the proposal.

124. [b7c] stated that there was no explicit direction on how rental cars should be used and that he was aware that members of his command were using rental cars to travel from Fallon to Reno, NV, for liberty. Additionally, [b7c] stated that he also had a rental car and used it for this purpose.

#### Applicable Standard

125. The JFTR establishes the policy for the use of rental vehicles by government (military and civilian) personnel on travel. Chapter 3, Part E, Section U3415, Paragraph G, of the JFTR states that special conveyance use is "Limited to Official Purposes ... including transportation to and from (65 Comp. Gen. 253, 1986): (a) Duty sites; (b) Lodgings; (c) Dining facilities; (d) Drugstores; (e) Barber shops; (f) Places of worship; (g) Cleaning establishments; and (h) Similar places required for the traveler's subsistence, health or comfort.

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## Analysis and Discussion of Allegation Four Findings

126. The JFTR states travelers may utilize rental vehicles to access dining facilities and "Similar places required for the traveler's subsistence, health or comfort." However, the regulation lacks specificity pertaining to distances one may legally travel. The purpose for the rental car travel was that after a period of 19 days on TAD, personnel wanted to get away from the small town of Fallon, NV, and go to a more populated area to dine, shop, and relax. The SME's advice ("Basically, we are seeing a misuse of the car, but then again everyone has done it, those who are honest just don't claim the gasoline and tolls") is not a valid response to whether it is permissible. In fact, this type of response indicates the opposite, which is that it is not permissible.

127. [redacted] b7c told the COMNAVAIRLANT IG that he had not approved the use of a rental car for travel from Fallon to Reno, NV. However, during the NAVINSGEN investigation, [redacted] b7c contradicted that statement by saying that he had allowed the junior officers to use the rental cars for this purpose and that he also had done the same.

128. CDR Christopher recalled the use of rental cars was acceptable with the understanding that travelers paid for their own gas vice charging it to the government.

### Conclusion for Allegation Four

129. The Allegation against [redacted] b7c is substantiated.

## Appendix A: Summary of Complaint and COMNAVAIRLANT Investigation

The February 2010 complaint ENS Crowston submitted to the COMNAVAIRLANT IG regarding concerns at his command, VFA-136 included the following:

1. Four months after reporting to VFA-136, ENS Crowston was subjected to a hostile work environment, as evidenced by sexual orientation discrimination within the wardroom.
2. An incident occurred at VFA-136, NAS Oceana, during a CSRB, in which call signs, some containing homosexual connotations, were proposed and voted upon for ENS Crowston by squadron officers, including [redacted b7c], the [redacted b7d], and CDR Damien Christopher, USN, the Executive Officer (XO).
3. ENS Crowston provided [redacted b7c] and CDR Christopher with written concerns about the sexual orientation harassment that he believed continued after the CSRB.
4. During a detachment to Key West, FL, ENS Crowston witnessed one junior officer wearing a snug shirt that rose above his navel and another wearing a T-shirt with a heart symbol in rainbow colors walk in as though they were imitating a homosexual couple; everyone knew that the T-shirt symbolized "gay" in Key West, FL.
5. ENS Crowston witnessed a junior officer embracing an enlisted member; both were touching all over each other.
6. On 29 December 2009, a pre-detachment brief for Fallon, NV, was conducted in the base theater. The Officer in Charge (OIC) of the detachment conducted the pre-detachment brief using slides containing an inappropriate call sign.
7. Communication breakdowns occurred involving the Detachment to Fallon, NV, which ultimately led to [redacted b7c] convening an investigation against ENS Crowston.
8. ENS Crowston alleged that [redacted b7c] retaliated against him because of the issues/concerns he has raised since being at the command.
9. ENS Crowston alleged that he was treated differently after he gave [redacted b7c] his letter regarding sexual orientation discrimination.
10. [redacted b7c] reprimanded him in the same room as other [redacted b7c] [redacted b7c] who attended a Commander's Conference in Norfolk, VA; ENS Crowston felt this public display was uncalled for and unprofessional.

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11. ENS Crowston sent an e-mail to CDR Christopher regarding a job/house hunting request by a VFA-136 senior chief. ENS Crowston informed CDR Christopher that the senior chief did not have a leave chit for the first week in January 2010. The senior chief's current leave status was unaccounted for, and he requested permissive temporary duty authorization for job/house hunting leave.
12. [b7c] used government funds to travel to San Diego to attend ENS Crowston's commissioning ceremony with two other members of the squadron. [b7c] mother lives in San Diego, CA, and his attendance gave the appearance of an improper use of government resources to visit a relative.
13. [b7c] relieved an officer, of his duties as Maintenance Officer.
14. CDR Christopher had a conversation with a VFA-136 squadron officer regarding possible racial comments another officer had made. CDR Christopher told the first officer he was well within his right to file a Command Managed Equal Opportunity (CMEO) complaint against the other officer.
15. In the summer of 2009, a Command Safety Assessment was conducted by the Safety Center. Junior officers in the command reported to the Safety Center that they did not feel safe at this command and that they did not believe they could report concerns to [b7c] and CDR Christopher (XO).
16. The SECRET safe in the Operations Department was left unlocked and unaccounted for during a span of 48 hours. ENS Crowston informed the chain of command of the guidance in the Security Manual.
17. Two enlisted members of the squadron, purchased paint for the command with personal funds. When [b7c] and CDR Christopher found out about this, CDR Christopher signed a check using squadron wardroom funds from Navy Federal Credit Union. ENS Crowston informed the Administration Department Head that what CDR Christopher did was not legal and [b7c] and CDR Christopher needed to be made aware of this.
18. An enlisted member of the squadron received an offensive e-mail from another enlisted member.
19. ENS Crowston requested an outside review of the command climate at VFA-136 and to be transferred to another command in the Navy.

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NAVINGEN investigated the following allegations and came to the same conclusions as COMNAVAIRLANT:

1. That [REDACTED] b7c [REDACTED], wrongfully traveled at government expense to attend the commissioning ceremony of ENS Steven Crowston, USN, in violation of the Joint Federal Travel Regulations (JFTR), is substantiated.
2. That [REDACTED] b7c [REDACTED], abused his authority by "reprimanding" ENS Steven Crowston, USN, in violation of the U.S. Navy Regulations, is not substantiated.
3. That [REDACTED] b7c [REDACTED], abused his position by directing a Preliminary Inquiry surrounding the missed movement of ENS Steven Crowston, USN, in January 2010, in violation of the U.S. Navy Regulations, is not substantiated.
4. That [REDACTED] b7c [REDACTED], improperly held ENS Crowston accountable for failing to terminate a former service member's Government Travel Credit Card, in violation of the Department of Defense (DoD) Financial Management Regulations, is not substantiated.
5. That [REDACTED] b7c [REDACTED], abused his authority when he relieved an officer of his duties in June 2009 and reassigned him to Strike Fighter Wing, U.S. Atlantic Fleet, pending his May 2010 resignation from the Navy, in violation of U.S. Navy Regulations, is not substantiated.
6. That VFA-136 command climate was poor under the leadership of [REDACTED] b7c [REDACTED], in violation of the Department of the Navy EO Policy, is not substantiated.
7. That CDR Damien Christopher, USN, XO, VFA-136, approved the use of rental cars by command members on liberty while on detachment in Fallon, NV, in violation of the JFTR, is not substantiated.
8. That CDR Damien Christopher, USN, XO, VFA-136, improperly directed the Wardroom Fund Administrator to reimburse two VFA-136 Sailors for paint from the Wardroom Mess Fund, in violation of VFA-136 Instruction 3120.1D, is not substantiated.
9. That CDR Damien Christopher, USN, XO, VFA-136, failed to take appropriate action as a result of a possible compromise of classified material, in violation of the Department of the Navy Personnel Security Program, is not substantiated.

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Appendix B: ENS Crowston Letter of 30 September 2009

On 30 September 2009, ENS Crowston wrote a letter to b7c, via CDR Christopher, regarding the CSRB of 17 August 2009. ENS Crowston's letter states:

On 17 September 2009, an inappropriate call sign review was conducted in the command's Ready Room with all Squadron officers present. I was purposefully and publicly humiliated as well as personally degraded; my sexual orientation was called into question when the words "Gay Boy" and "Fagmeister" were written on the board under my name. The call sign I ultimately received "Romo's Bitch" has a homosexual connotation to it as well. The clear message from my seniors and my peers was that I am perceived to be homosexual.

This behavior is offensive and appalling. On 20 September 2009, an AOM was held. The XO recommended that anyone present who thought they might have offended someone apologize to that person. Since that time, objectively offensive jokes have been made, inappropriate comments sent through a government computer have been made, and I am not confident that everyone received appropriate or meaningful training from the AOM. I have not received an apology except from one officer, who I do not believe was responsible for recommending the inappropriate names on the board. Instead, I was told this is typical behavior of squadrons and that this is done to everyone. I am told that the officers are upset that I approached the E7 and XO with this issue instead of coming to them.

I am also told that I should feel privileged that I was even considered for a call sign since I am not a naval aviator. This is objectively unacceptable.

I respect the call sign review process. However, there are limitations. Call signs should represent diversity across the board and allow someone to feel like a part of the team. A call sign should be appropriate when explained to family members, on CNN, and should not be embarrassing or humiliating. All, save a few, of the officers in the Ready Room were senior to me. I do not know the officers outside of the professional work setting. I do not socialize with them nor do I interact with them beyond the work environment. The call sign review was done in an official space within the Squadron under the supervisor of superior officers. This is unacceptable behavior by all concerned. This inappropriate behavior should have never occurred; it has created a hostile work environment.

I am owed an apology by those officers responsible, particularly the ones who thought it was appropriate to recommend "Gay Boy" and "Fagmeister", and the officer who believed it was appropriate to write these names on the board. I should be afforded the right to come to work each day in a harassment free work environment without fear of denigrating comments nor reprisal.

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## Appendix C: Excerpts from ENS Crowston Interview

On 17 August 2010, ENS Crowston made the following statement under oath to NAVINSGEN Investigators:

There was a call sign review. There were gay names written on a board that were voted upon—the [b7d] and XO present. At the end of the hearing, Romo's Bitch was the call sign, which—I took to mean that I get screwed in the anus, because of Romo - because of Fagmeister and Gay Boy. I was stunned and appalled that that was on a board, and that was being voted on in a Ready Room, in uniform, in the work space.

After the voting, there was a picture by a jet with all the officers, and there was a comment made by one of the pilots when the photographer said, one half step in, and one of the pilots had mentioned, you know, he had to protect his ass from Steve, which—I knew what that meant. It meant that now I was going to become the gay punching boy.

I went to my e-mail after that and sent an e-mail to several, well not several; probably eight or nine people—telling them what had transpired in the Ready Room. I couldn't believe this happened. And they obviously asked me if I was going to address it, and I said, of course, I needed to calm down, gather my thoughts.

I went to the XO and told him I was offended, because the [b7d] and XO-Sorry. XO meaning-Sorry, CDR Christopher is now the [b7] of VFA-136, he was the XO at the time. I met with the XO and told him that this shouldn't have happened, I can't believe it happened. I believe that I was wronged in there. He told me that it was meant to be a joke, it was not to be offensive, but he understands that I am offended. I was sure that the XO understood that he thought this was inappropriate. I was owed an apology. The XO told me that he would talk to the [b7] that—later that evening, and that he would be getting back with me.

The next morning I met with the XO who informed me that he had met with the [b7c], and that they were not in a position to mandate apologies. And he also said that if I feel that I am owed an apology that I should go to those people that actually did the offensive behavior. He also said they discussed that they were going to hold an all-officers meeting in a couple days to address this.

An all-officers meeting was held and—there was never an acknowledgement to me from my [b7] and XO that what they did—condoned it; they did not stand up in there and stop this behavior from happening. They allowed my peers, who I have to work around every day, people above me, to sit there and ridicule and belittle and humiliate me in front of everybody. And then, he expects me to go around the command and be a team player.

Everyone, every now and then, would make their little gay jokes.

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I believed that the [b7d] and XO had not done anything to resolve the issue, as inappropriate comments continued to be made in the workspaces, even if not directed to him.

I decided to do a letter thinking maybe the [b7], when he sees it—and I knew there would be repercussions, which started everything... But I had to do something, because it wasn't getting fixed, verbally. I notified the XO and there was a meeting with him, the XO and [b7d], and that when I finally had an opportunity to sit down with the [b7d] I explained there was a problem, but he didn't want to hear it.

In the meeting I was told that "You've blown it out of proportion; that was meant to bring you in. It was meant to show camaraderie amongst the pilots. As you know, you're not a pilot, you don't get call signs. But, you know, you are able to get a call sign when you come here because that's one of the ways to accept you into the Ready Room of being one of us. It just seems like you are having a hard time learning to adjust to officer life. You're having a—and it seems to me you can't leave the Chief's Mess behind. And you obviously are having an issue with learning how it works at this squadron. I have already addressed your concerns. I addressed them whenever you reported them to CDR Christopher. And now you've decided to do a letter."

[b7c] told me that he was not in the position, as [b7d] to mandate apologies. And if I felt—which is the same rhetoric that CDR Christopher used—and if I still felt like—that I was owed an apology, that I needed to go approach those that did the offensive behavior. He also said that he needed all his nighthawks to get a thick skin. We're preparing for war. This is a distraction to his mission, and he needs me to either learn to get on board, or I can go elsewhere.

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Appendix D: Excerpts from [b7c] Statements

1. On 19 August 2010, [b7c], made the following statement concerning the CSRB:

I was present at the CSRB on 17 August 2009 and that six officers' call signs were being reviewed. "... [b7c], [b7c], [b7c] and [b7c], [b7c], and ENS Crowston were the six that I recall with names up there, names and then anywhere from four to six ideas."

That six officer's names were on the board with a list of five-six potential call signs listed directly below their names. Four of the officer's had at least one call sign option that included a derogatory homosexual reference.

My clear recollection was driven by the fact that, as I looked up there and noticed -- the homosexual language was what struck me and was what I made a note that I needed to address.

And specifically I want to say the name might have still been on the board later in the day when XO -- ENS Crowston went to the XO and let him know that he was embarrassed. And I -- you know, I might have gone back, or I might have just -- I can't recall.

My point is, my clear recollection was not on specific call signs. My clear recollection was that I was struck by the homosexual language that I knew I needed to address. And for reference, I looked up and said, "Well, how many guys -- you know, how widespread is this?" And my count was four of six at the time.

That at the time, I was not struck by the impropriety of the call signs. By standards I had witnessed in the past this was a "fairly tame" set of call signs.

I'm not one to catalogue, you know, all the call signs that I've heard. My just general sense was although this was certainly no worse and probably a lot tamer than a lot of the call -- potential call signs I'd seen at call sign review boards in the past.

I took ENS Crowston's heavier percentage of homosexual related call signs as a sign of a lack of creativity on the part of the junior officers rather than a personal statement regarding ENS Crowston. and, certainly, at that moment had I thought anybody had been either transmitting it or receiving it in an insulting way, I would have stopped it without a doubt.

2. When [b7c] was asked to further explain what he meant by his statement that he noticed that ENS Crowston had a heavier percentage of homosexual related call signs, he stated:

At the time, all it -- what it told me is -- what I thought it told me, and I think -- still think it tells me, is that the rest of the Ready Room didn't know Steve well -- excuse me, ENS Crowston well.

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Again, I'll try to give it some historical perspective or Ready Room culture or whatever.

What I've seen typically is when guys don't have anything on a guy -- he hasn't done anything silly, you know; he hasn't exposed himself by doing something, you know, in the airplane, you know, by screwing something up -- if there's not, you know, personal characteristics, you know, that are there to highlight or whatever the case may be, the shall we say old standby when you're looking

for something funny is to use those homosexual reference slurs, again in a sexuality-neutral way, in the same way you would call --

I'm not here to say this is the right way to do business or a very nice thing to do -- not to comment on somebody's sexuality, but in the same way, when, you call some guy stupid or a jerk off or a knucklehead.

I voted for the call sign "Cowboy" at the CSRB because ENS Crowston was an avid "Dallas Cowboy fan." "Cowboy," because it was clear that's what he -- he had made some mention at some point that he thought Cowboy should be his call sign. So I voted for Cowboy.

I recognized the names were inappropriate and that they had standard homosexual reference terms. Anyway, struck by, okay, some of these were over the top, and also noticed that there was some kind of what I call the standard homosexual reference terms up there on the board as well. And I noted that there were -- out of the six total, four guys up there had call signs with -- you know, kind of questionable in their appropriateness reference to homosexuality.

The names were used in a sexuality-neutral way--the same way you call a guy a loser, a jerk-off, or a dumb ass.

When someone has not done anything memorable that warrants a call sign, the old standby, looking for something funny, is to use those homosexual reference slurs... and they don't know much about Steven. Steven hasn't done much to give them ammunition other than being a Cowboy's fan, so they're going to the old well of tried and true, you know, that always gets a--always gets a laugh, of calling him something related to gay or fag.

I made the decision at the moment I realized the call signs were inappropriate to not do anything right away, but stated that I planned to immediately address this at the next AOM, and that this next AOM was moved up as a result of the XO stating to me that "Steven [ENS Crowston] had come into his office, obviously agitated and worked up, and that he had been real upset about the call sign review board. My reason for not putting a halt to the events unfolding at the CSRB was that I did not think the call signs were being used in an insulting way and that I did not want to put a halt to the officers trying to improve morale by having this event.

I don't want to pooh-pooh the guys who try to take my direction and try to come up with a fun team-building event by shitting all over

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them...I was like okay...we've got to talk about the homosexual stuff, and I'll do that...at a later date.

I recognize that the homosexual references, if you will, were not appropriate and not where we're going, and we needed to change our culture and change our language to reflect that.

Had I thought at the time that those terms were being used or perceived as insults, I absolutely would have stopped it and I absolutely would have stopped it right there.

But I guess what I'm trying to express is, at the time, in the environment I was in and the environment that I'd been accustomed to, I did not see those -- I did not see those being transmitted or received in that fashion.

3. [b7c] made the following statement concerning whether he felt what occurred in the Ready Room was hazing:

On 20 August 2009, exactly three days after the CSRB, I addressed everyone at an AOM, by giving a speech about "old school mentality in the Ready Rooms" and how this old school mentality was extremely hostile to the presence of women. I used the example of an officer who experienced a form of institutional intolerance toward women during Tailhook and also discussed the pressure this created for Navy leaders to rapidly integrate squadrons with female fighter and attack pilots. This led to my discussion of the death of the Navy's first female F-14 fighter pilot, and how this death had its roots in institutional intolerance for women. I then proceeded to discuss the Navy's "Don't Ask, Don't Tell policy" and how it was on life support.

Finally, I told my wardroom that there were probably members of my squadron who were homosexual and that was okay. They are Hawks, they are my Hawks and I am committed to providing an environment where they can serve and reach their utmost potential free from hostility and marginalization. None of my speech was directed toward ENS Crowston and that I just spoke in generalities so as to not single out any one individual.

I did not believe I condoned the hazing of ENS Crowston because although I agree with what transpired at the CSRB meets the definition under paragraph 6(a) of SECNAVINST 1610.2A, it does not meet the definition under paragraph 6(b) since all the examples listed in that paragraph involve someone intentionally trying to cause someone physical pain, discomfort, or humiliation. I recognized that paragraph 6(b) does contain the language "but is not limited to," but still believe that the behavior was yellow zone sexual harassment as determined by the COMNAVAIRLANT IG.

4. When [b7c] was questioned as to how he perceived how someone could have experienced humiliation, cruelty, and all the adjectives listed in paragraph 6(a) of SECNAVINST 1610.2A, he stated:

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Well, without being too negative, I can see people who are looking to lop someone's head off or substantiate an allegation to interpret it-- if they're coming into it from the perspective that of course this is hazing--you know--they'll look and see what they want to see.

5. On 2 September 2010, [b7c] provided NAVINSGEN a follow-up written statement for the record to further explain his position regarding the allegation of hazing. [b7c] stated:

If one were to read paragraph 6(a) of reference (a) in isolation, almost any offense by one member against another--from blue-on-blue domestic violence to sexual harassment to simple assaults--would be considered as instances of hazing. This would be an absurd result and is certainly not the one contemplated by the instruction. Taking the definition in paragraph 6 as a whole, I believe that the instruction is primarily calculated to reach conduct that is intended to humiliate other members.

Although I believed that the call signs proposed at the call sign review board were probably "yellow light" in nature, requiring a corrective measure by me, I do not believe that the intent of the call sign review board was to humiliate or degrade any members of the command. The call sign review board was a well-intentioned but ill-conceived attempt by the command's junior officers to bolster command morale during a time when our operational tempo made maintaining morale difficult.

Even if the definition of hazing is read so broadly as to include the call sign review board's conduct, I disagree with the allegation that I condoned hazing within my command. Although my response to the incident was informed by the sexual harassment instruction rather than the hazing instruction, I am satisfied--and Ensign Crowston was previously satisfied--that my response to the conduct left no doubt in the wardroom that I did not tolerate the conduct in question.

I recognized immediately that I would need to take some remedial measures following the call sign review board.

I discussed this requirement with my XO, and we planned to use the following week's AOM to discuss the inappropriate proposed call signs. When ENS Crowston approached me and told me that he specifically was offended by the call sign review board, I decided that an even faster response was necessary, and addressed the wardroom within three days of the incident.

I make it clear that I will not tolerate offensive references to members' sexual orientation for any reason. My condemnation of this conduct was not a function of whether it is classified as hazing, sexual harassment, both, or neither. As I made clear in enclosure (1), such conduct was unacceptable in my command because I am completely committed to providing a workplace for all Sailors free from hostility or marginalization. I remain confident that my response to the proposed offensive call signs was timely and appropriate.

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6. The 2 September 2010 statement from [b7c] submitted to NAVINSGEN included enclosures, one of which is [b7c] statement to the wardroom in response to the proposed call signs. The following comes directly from that statement:

Good Morning. I want to tell you guys a story. This is a story about how institutional intolerance caused the death of a young woman. When I entered the Navy and when I entered the fleet in 1995 there were still strong holdovers of the old school mentality in the Ready Rooms. This old school mentality was extremely hostile to the presence of women. The old school mentality was institutionalized from top to bottom within fleet units, especially before 1991.

Because this attitude was so pervasive it created an environment where a few bad apples thought it was ok during the 1991 Tailhook convention to physically assault a female officer. Additionally, because the anti-female attitudes were so pervasive, Naval Aviation

closed ranks in an unhealthy fashion during the Tailhook investigations and created such controversy, that dramatic change was required. As a result, courses of action were undertaken to save face and appear to be "solving the problem." Navy leaders were under tremendous pressure to rapidly integrate squadrons, especially front line fighter and attack units. The problem was the pool of available female officers to put into the cockpits was very small. Some officers were put into aircraft they were not skilled enough or qualified to fly.

As a result, in 1994, a young woman (the first to fly F-14's operationally) was flying an approach to the USS Abraham Lincoln in her Tomcat when her left engine stalled. This engine stall was recoverable, however she did not apply proper engine stall recovery procedures and the aircraft aerodynamically stalled, rolled, inverted and crashed into the sea killing her. The death of this woman had its roots in institutional intolerance for women.

Fast forward to today. I have served with a number of tremendous female officers and pilots and we have an outstanding environment for women to thrive in any squadron throughout Naval Aviation.

We have come a long way ... however we still have some holdover, institutional intolerance which has been allowed to linger. In case you didn't realize it, "Don't ask, Don't tell" is on life support, and rightfully so. We, as a nation, have come a long way since 1993, and the Sailors entering today's Navy are more savvy, cosmopolitan, and tolerant of different lifestyles than they were even 10 years ago. Additionally, I believe that denying someone an opportunity to serve their country based on sexual orientation is wrong and contrary to the ideals which we are fighting to protect.

Lastly, whether you realize it or not, there are probably members of our squadron who are homosexual. And that is ok. They are Hawks, they are my Hawks, and I am committed to providing an environment where they can serve and reach their utmost potential free from hostility and marginalization. I am not going to allow the Hawks to

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be part of the problem. I want the Hawks to lead like we always do. It is going to be a bit of a culture shift but from here on out, derogatory references of a homosexual nature, call signs or otherwise, will not be tolerated. Call sign Review Boards that include derogatory references, be they sexual orientation, gender, or racially based, will not happen. We are going to go out of our way to police our language and attitudes to reflect the professional work we do every day. Does anyone have any questions?

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**Appendix E: Excerpts from OPNAVINST 5354.1F DON EO Policy**

1. The entire 46 page instruction may be found at:

<http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5354.1F.pdf>

2. Paragraph 4 of the instruction (Discussion) states:

- a. Acts of unlawful discrimination and sexual harassment are contrary to our Core Values of honor, courage and commitment. Sailors and civilians who model Navy Core Values do not engage in negative behaviors nor condone these actions in others. Additionally, these practices adversely affect good order and discipline, unit cohesion, mission readiness and prevent our Navy from attaining the highest level of operational readiness.

- b. The objective of Command Managed Equal Opportunity (CMEO) is to promote positive command morale and Quality of Life (QOL) by providing an environment in which all personnel can perform to their maximum ability, unimpeded by institutional or individual biases based on race, color ethnicity, national origin, sex, or religious stereotypes. Command leaders must create, shape, and maintain a positive EO environment through policy, communication, training, education, enforcement, and assessment.

3. Paragraph 6 of the instruction (Policy) states:

- a. ... [I]t is Department of Defense and Department the Navy policy to prohibit unlawful discrimination and sexual harassment against persons or groups based on race, color, national origin, sex or religion. Service members shall be evaluated only on individual merit, fitness and capability.

- b. Equal opportunity, the prevention of sexual harassment, and all the elements thereof as defined in this instruction are gender-neutral concepts. The focus is on the detriment to good order and discipline, unit cohesion and military readiness that results when our Navy's Core Values are not adhered to, not the sex of the members involved; therefore, discrimination, sexual harassment, threats and other behaviors covered by this instruction apply. This includes conduct against service members on the basis of perception of sexual orientation or homosexual conduct.

- c. No individual in the Navy organization shall: While in a supervisory or command position, condone or ignore unlawful discrimination or sexual harassment of which individuals have knowledge or have reason to have knowledge.

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4. Paragraph 7 of the instruction (Responsibility) requires, at subparagraph k, that Commanding Officers shall:

- (1) Promote a positive command climate through personal example.
- (14) Ensure an effective system is in place within the command to resolve complaints of unlawful discrimination and sexual harassment at the lowest appropriate level.
- (15) Ensure all individuals are familiar with their right to submit an informal or formal complaint and the methods for submission.
- (20) Ensure command climate complaints are investigated in a fair, impartial, and prompt manner and that all commands investigations of EO complaints are reviewed for legal sufficiency.

5. Paragraph 7, subparagraph n, requires that individual service members shall:

- (1) Treat others with dignity and respect.
- (2) Promote a positive command climate within the Navy through personal example.
- (3) Be responsible and accountable for reporting acts of unlawful discrimination and sexual harassment ...

6. Paragraph 8 of the instruction (Action) states that "Commanders shall take action and be held accountable for implementation and enforcement of the provisions of this instruction."

7. Enclosure (1) of the instruction contains 33 numbered definitions. Pertinent definitions include:

6b. Informal Complaint. Allegation of unlawful discrimination or sexual harassment made either in writing to the morning warning at a Detroit only to want is to look at the CNE offending party or verbally per the Informal Resolution System (IRS) process. Informal complaints do not require a command directed investigation.

19. Hostile Work Environment. An environment which prevents members from functioning to their full capacity, free of unlawful discrimination and sexual harassment. A hostile work environment unreasonably interferes with an individual's work performance. It need not result in concrete psychological harm to the victim but need only be perceived by a reasonable person, and is perceived by the victim, as hostile or offensive.

26. Reasonable Person Standard. An objective test used to determine if behavior meets the legal test for unlawful discrimination and sexual harassment. The test requires a

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hypothetical exposure of a reasonable person (third party) to the same set of facts and circumstances, if the behavior is offensive, then the test is met. The reasonable person standard considers the complainant's perspective and does not rely upon stereotyped notions of acceptable behavior within that particular work environment.

29. Sexual Harassment (SH)

a. Definition: A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive work environment.

b. This definition emphasizes that workplace conduct, to be actionable an "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive.

c. The term "workplace" or "work environment" is an expansive term for military members and may include conduct on or off-duty, 24 hours a day. The work environment is the workplace or any other place that is work-connected, as well as the conditions or atmosphere under which people are required to WORK. Examples of work environment include, but are not limited to, an office, an entire office building, a DOD base or installation, DOD ships, aircraft or vehicles, anywhere when engaged in official DON business, as well as command-sponsored social, recreational and sporting events, regardless of location.

d. Any person in a supervisory or command position who uses or condones any form of behavior to control, influence, or affect the career, pay, or job of a military member ... is engaging in SH.

e. Any military member ... who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

8. Enclosure 2 of the instruction, Sexual Harassment Guidelines and Range of Behaviors discusses SH guidelines and ranges of behavior. Paragraph 2, Description, states that " SH may consist of a wide range of behaviors that are unwelcome, sexual in nature, and connected in some way with a person's job or work environment, (for servicemembers this may include conduct on or off-duty, 24 hours a day). Subparagraphs provide amplifying information, including:

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a. Unwelcome behavior is behavior that a person does not ask for and which that person considers undesirable or offensive. Not everyone has the same perception of the term "undesirable or offensive." Since the person being subjected to the behavior, "the recipient," is the one being affected, it is the recipient's perception that counts. A common sense approach uses the "reasonable person standard" ... which considers the situation from the perspective of the recipient. Behavior that a "reasonable person" would find unwelcome may be grieved."

b. Sexual harassment is a gender-neutral concept. The focus is on the detriment to good order, discipline and military readiness that results when our Navy's Core Values are not adhered to, not the sex of the members involved; therefore, sexually harassing behaviors involving members of the same sex as well as those directed at service members on the basis of alleged homosexuality are prohibited and all requirements of this instruction apply.

c. SH is a gender-neutral concept. The focus is on the detriment to good order, discipline, and military readiness that results when our Navy's Core Values are not adhered to, not the sex of the members involved; therefore, sexually harassing behaviors involving members of the same sex as well as those directed at servicemembers on the basis of alleged homosexuality are prohibited and all requirements of this instruction apply.

d. For sexual harassment to occur, unwelcome sexual behavior must occur in or impact the work environment.

(2) When the unwelcome sexual behavior of one or more persons in a workplace interferes with another person's work performance, sexual harassment has occurred. If the behavior produces a work atmosphere that is offensive, intimidating or abusive to another person, whether or not work performance is affected, a type of sexual harassment called "hostile environment" has occurred. Following are a few examples of behavior that could create a hostile environment:

a) Using sexually explicit or sexually offensive language.

e. Individuals believe they are being sexually harassed based on their perception, that each incident is judged on the totality of facts in that particular case, and that individuals' judgment may vary on the same facts; therefore, caution in this area is advised. Anytime sexually oriented behavior is introduced into the work environment or among co-workers; the individuals involved are on notice that the behavior may constitute sexual harassment. The most severe forms of sexual harassment constitute criminal conduct, (e.g., sexual assault).

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9. Enclosure two, Paragraph 3, Range Of Behaviors, introduces the traffic light illustration of SH analysis. Green light or "zone" behavior is not SH. Yellow zone behavior may be SH, and red zone behavior is always SH. Paragraph 3 provides examples of yellow zone many people would find unacceptable and that could be SH. The examples include mood or sexually suggestive comments; off-color jokes; foul language and unwanted letters or poems.

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Appendix F: ADM Harvey Letter of 19 July 2010

1. In a letter of 19 July 2010 to CNAL, ADM Harvey noted his recent review of the CNAL IG investigation and RADM O'Hanlon's endorsing letter and commented sharply on the call sign/CRB issue and on the "judgment exercised by the [redacted] b7c". The body of ADM Harvey's letter is quoted in full, as follows:

1. I recently reviewed references (a) and (b) and reiterate the need to complete as soon as possible action on the IG's recommendations, in particular Recommendation 2 pertaining to callsigns [that CNAL and CNAF jointly address the issue]. While the use of callsigns is based on longstanding tradition in Naval Aviation, callsigns (or the manner in which they are assigned) cannot be allowed to degrade our people or diminish the public's perception of our professionalism and commitment. For some this action may require a significant culture shift, but it is an absolute imperative for all. Entrenched practices that do not value the contributions of all of our personnel must either change, now, or be discontinued - Naval Aviation now has the opportunity to set the course for change.

2. Although I find the [redacted] b7c 20 August 2009 response to the unacceptable callsign review board positive, I expect [redacted] b7c to recognize the inappropriateness of a situation as it unfolds and forcefully interject their leadership in real-time, not after the fact. Similarly, I expect the [redacted] b7c to exercise good judgment and immediately terminate the use of callsigns that are inappropriate on their face. Finally, I expect [redacted] b7c to exercise good judgment and common sense in all of their command's dealings, regardless of any advice they may or may not receive from their subordinates.

3. Given the facts in the investigation, I have significant concerns regarding the command climate at VFA-136 and judgment exercised by the [redacted] b7c. Accordingly, and recognizing that the sexual harassment, discrimination and "Don't ask, don't tell" policy training recommended by the IG has been completed, I direct that a command climate survey be conducted at VFA-136 to ensure that there are no underlying issues that remain to be addressed. Upon completion of the survey, the USFF IG and N1 are to be apprised of the results and any required follow-on action.

4. We are a diverse Navy with diverse talents. We cannot allow practices to continue that impair our men and women from fully employing those talents in support of mission accomplishment. Accordingly, I look forward to seeing your guidance and direction on callsign review boards by the end of August.

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2. During his interview for this investigation, ADM Harvey stated that when he reviewed the VFA-136 investigation, he "thought it missed the mark" in the way it addressed the CRB. His reaction to reading it was to send CNAL a letter that "focused them on [those] issues." He stated:

Well, there were three pieces, one was we didn't get to . . . the heart of the issue on the call sign. You know, if the process is being allowed to be one of degradation it's unsat and you need to deal with that. And so there's follow-on action that he took with ADM Myers [Commander Naval Air Forces], you know the counterpart on the West Coast. . . . So I wanted them to deal with the broader issue of the call signs, not just who has said what to the Ensign but does this indicate, you know, bigger things that you got to go and get after. So if so, go get after it.

Secondly, I wanted to call particular attention to the performance of the [b7c] which I regarded as less than satisfactory. What I regarded as a very negative event took place in front of the [b7c] in real time in a place where he was in command and he did not act and that goes counter to what I expect from a commanding officer of the United States Navy. So I wanted to call that out specifically that there was an issue with the [b7c] performance.

And then thirdly, I thought, again, there was . . . an issue in that this had to be then, in my mind, a question of the command climate. [I]f this was what we did, well how does that broadcast through the rest of the command, whether it's the blue shirts, the chiefs, or the ready room. So I wanted to get at that and that's why I said, "Hey, if this is the standard, if this is regarded as okay in VFA 136, that sounds sad and we need to determine just what is okay there and what the sailors think about it and the leadership that they're getting." So that's where . . . we get at the underlying issues and that was the last paragraph there. [Y]ou come back and get to the heart of what's going on in that squadron and let's be sure we understand it.

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