

# NAVAL INSPECTOR GENERAL


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## REPORT OF INVESTIGATION

**Subj: NAVY SENIOR OFFICIAL CASE 201203467; ALLEGATIONS OF IMPROPER CONDUCT BY RDML CHARLES M. GAOUCETTE, USN**

**8 February 2013**



  
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Office of the Naval Inspector General

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Preliminary Statement

1. On 13 October 2012, FOIA EX (b)(6) & (b)(7)(c), USN, the FOIA EX (b)(6) & (b)(7)(c) of USS JOHN C STENNIS (CVN 74), (Complainant) emailed the Naval Inspector General (NAVINSGEN) and made a complaint against RDML Charles M. Gaouette, USN, Commander, Carrier Strike Group THREE (CCSG-3), (Subject). Complainant alleged that Subject was an abusive leader and provided a number of examples of what he believed to be improper behavior by Subject. Complainant stated that Subject's abusive leadership style created a hostile working environment for the Strike Group staff and Strike Group Warfare Commanders.

2. Complainant further alleged that Subject made "blatantly derogatory remarks" about certain minority Flag Officers during private conversations with him and that he engaged in "unwarranted personal attacks" against two of these officers during a private dinner conversation they shared together with FOIA EX (b)(6) & (b)(7)(c) USN, FOIA EX (b)(6) & (b)(7)(c) USS MOBILE BAY (CG 53). Additionally, Complainant provided a photograph of an enlisted African-American male aircraft mechanic onboard STENNIS that Subject took and subsequently emailed to six White male senior Navy Captains in the Strike Group. Complainant characterized the picture as "an obvious attempt to solicit stereotypical sexual humor and innuendo."

**Summary of Findings and Conclusions**

3. To address these allegations we examined whether, viewed in its totality, Subject's conduct as CCSG-3 between April and October 2012 adhered to the leadership qualities required by Article 1131 of the U.S. Navy Regulations (NAVREGS), "Exemplary Conduct." We conclude it did not.

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4. We then consider whether Subject's conduct was an abuse of authority in violation of NAVREGS Article 1023, and conclude it was not. We did find, however, that in addition to falling short of reasonable expectations for exemplary conduct, Subject's comments and emails about minority personnel violated provisions in SECNAVINST 5350.16A, "Equal Opportunity within the Department of the Navy" and OPNAVINST 5354.1F, "Navy Equal Opportunity Policy," that require Commanders to "promote a positive command climate through personal example" and charge all service members to "treat others with dignity and respect." We also determined that some of his conversations with subordinates diminished confidence in, or respect for, superior officers in violation of NAVREGS Article 1133, "Language Reflecting on a Superior."

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5. NAVINSGEN formulated the following allegations:

**Allegation #1:** That Subject's conduct while executing his duties as Commander, Carrier Strike Group THREE from April 2012 until October 2012 did not adhere to the requirements of NAVREGS, Article 1131, Exemplary Conduct.

**Conclusion:** The allegation is substantiated.

**Allegation #2:** That Subject's conduct while executing his duties as Commander, Carrier Strike Group THREE from April 2012 until October 2012, included instances of abusive leadership, in violation of U.S. Navy Regulations (NAVREGS) Article 1023, Abuse of Authority.

**Conclusion:** The allegation is not substantiated.

**Allegation #3:** That Subject sent a racially offensive email to members of his command in violation of SECNAVINST 5350.16A, Equal Opportunity within the Department of the Navy and OPNAVINST 5354.1F, CH-1, Navy Equal Opportunity Policy.

**Conclusion:** The allegation is substantiated.

**Allegation #4:** That Subject spoke in a manner which tended to diminish confidence in or respect due to ADM (b)(6) & (7)(c) [REDACTED], USN; VADM (b)(6) & (7)(c) [REDACTED], USN; and RADM (b)(6) & (7)(c) [REDACTED],

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USN; in violation of NAVREGS, Article 1133, Language Reflecting on a Superior.

**Conclusion:** The allegation is substantiated.

## **Findings of Fact**

### **Background**

6. On 2 March 2012, USS JOHN C STENNIS (CVN 74) and its associated Strike Group returned from a seven-month deployment. Thereafter, STENNIS was designated as the "surge" carrier should a short-notice requirement for a carrier to deploy become necessary. Complainant is the STENNIS FOIA EX (b)(6) & (b)(7)(c), having FOIA EX (b)(6) & (b)(7)(c) on FOIA EX (b)(6) & (b)(7)(c), 2011.

7. RDML Gaouette assumed command of Carrier Strike Group THREE on 6 April 2012; the STENNIS was his flagship. On 27 August 2012, the STENNIS Strike Group departed for an eight-month surge deployment under Subject's command.

8. En route, STENNIS and MOBILE BAY crossed the Pacific Ocean, transited the Strait of Malacca and entered the Indian Ocean. The Strike Group "chopped" to the Operational Control of Commander, Naval Forces Central Command/Commander, FIFTH Fleet on 17 October 2012. Carrier Air Group NINE (CAG NINE) was embarked aboard STENNIS and aircraft from CAG NINE began flying Operation Enduring Freedom (OEF) combat sorties from the North Arabian Sea into Afghanistan immediately thereafter.

9. In the following paragraphs, we present all the facts associated with this case. We have done this in an effort to help the reader form a comprehensive picture of Subject's conduct over the course of his time in command. It is the totality of Subject's conduct that we subsequently examine against the Exemplary Conduct and Abuse of Authority standards.

10. For convenience in presenting these facts, they are grouped under the following headings: Interactions with Senior Staff, Confrontation about FOIA EX (b)(6) & (b)(7)(c) Handling of STENNIS, Subject's Alleged Derisive Comments to Complainant, Subject's Alleged Mistreatment of Junior Personnel, Subject's Language in Speeches and Written Communications, Subject's Use of Profanity and Middle Finger Gesture at Foc'sle Follies, Alleged Racially Offensive Email and Comments about Minority Flag Officers.

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## Interactions with Senior Staff

### Complainant's Allegations About Treatment of Senior Staff

11. Complainant stated that Subject was abusive during Warfare Commander video teleconferences (VTCs). According to Complainant, on one occasion Subject "exploded and launched into an unprofessional, unbalanced, and disturbing tirade" about his perceived lack of teamwork. Complainant alleged that during this particular VTC, Subject "blatantly and clearly threatened to 'destroy the careers' of those individuals who did not fall in line with his vision." He said Subject's threat was made as a general comment and he did not direct his comments to any one of his Warfare Commanders in particular.

12. Complainant also alleged that he witnessed Subject "publicly reprimand" FOIA EX (b)(6) & (b)(7)(c), USN, FOIA EX (b)(6) & (b)(7)(c), Destroyer Squadron TWENTY ONE, and FOIA EX (b)(6) & (b)(7)(c), USN, Subject's FOIA EX (b)(6) & (b)(7)(c), on multiple occasions "regarding issues that were beyond their [individual] control and frequently of minimal significance to the mission." Complainant testified that FOIA EX (b)(6) & (b)(7)(c) and FOIA EX (b)(6) & (b)(7)(c), USN, FOIA EX (b)(6) & (b)(7)(c), CAG NINE, shared their own stories of "similar experiences and interactions with Subject" with him in separate conversations.

13. We interviewed the FOIA EX (b)(6) & (b)(7)(c) and Subject's FOIA EX (b)(6) & (b)(7)(c) and asked them about their individual experiences with Subject. Their individual testimonies about those experiences are summarized in the following paragraphs:

#### Testimony of FOIA EX (b)(6) & (b)(7)(c)

14. FOIA EX (b)(6) & (b)(7)(c) testified that Subject would let those that had not met his expectations know in clear terms that he was displeased with their performance of duties and instructed them about how to correct the situation. FOIA EX (b)(6) & (b)(7)(c) said he "never heard [Subject] raise his voice," however, when giving direction to correct a particular action that had not been accomplished as he expected. FOIA EX (b)(6) & (b)(7)(c) also testified that he did not believe that Subject was abusive in his dealings with him. He said Subject was "very straightforward [when speaking to others including himself] and many times he was straightforward publicly." FOIA EX (b)(6) & (b)(7)(c) noted that Subject's leadership style was not his leadership style but he did not believe anything Subject

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did was reason enough for anyone to "throw up [their] hands and say, I've had it." FOIA EX (b)(6) & (b)(7)(c) summarized his opinion about how difficult Subject was to work for in comparison to all previous commanders he worked for. On a scale of 1 to 10 with one being the easiest person to work for and 10 being the most difficult to work for, FOIA EX (b)(6) & (b)(7)(c) rated Subject a six.

#### Testimony of FOIA EX (b)(6) & (b)(7)(c)

15. As FOIA EX (b)(6) of MOBILE BAY, FOIA EX (b)(6) & (b)(7)(c) interaction with Subject was primarily by VTC. He testified that during the many teleconferences he participated in with Subject, he did not recall a time when Subject had shown an explosion of anger or made a public reprimand directed at him. He did recall a time, however, when FOIA EX (b)(6) & (b)(7)(c) "was given a fairly strong rebuttal on the VTC." FOIA EX (b)(6) & (b)(7)(c) noted that while "... it was a strong rebuttal, probably in 25 years of naval service and working with previous COs... it was not in the top 10" that he had witnessed. FOIA EX (b)(6) & (b)(7)(c) further testified that while his personal interactions with Subject had not been difficult, he was aware, as a result of private conversations with FOIA EX (b)(6) & (b)(7)(c) and Complainant that they had had several particularly difficult individual conversations with him.

#### Testimony of FOIA EX (b)(6) & (b)(7)(c)

16. FOIA EX (b)(6) & (b)(7)(c) testified that there had been times during Warfare Commander VTCs when Subject voiced his displeasure with something he had or had not done. He recalled having walked out of more than one of their meetings thinking to himself: "Boy, that didn't go so well" but he had never felt "humiliated" or "personally attacked" by Subject during any of their interactions. FOIA EX (b)(6) & (b)(7)(c) stated his belief that among the Warfare Commanders there are one or more individuals who have "had profound professional disagreements and are unwilling or unable to reconcile those with [Subject]." FOIA EX (b)(6) & (b)(7)(c) also testified that Subject is a difficult man to work for and that as a result, he has made adjustments to his approach to his performance of warfare commander duties to accommodate Subject's expectations. FOIA EX (b)(6) & (b)(7)(c) views Subject's desire to conduct some aspects of the Strike Group's business differently than it may have been done under the previous Strike Group Commander as an appropriate exercise of Subject's "prerogative of command."

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**Testimony of [FOIA EX (b)(6) & (b)(7)(c)]**

17. As Subject's [FOIA EX (b)(6) & (b)(7)(c)], [FOIA EX (b)(6) & (b)(7)(c)] has the most frequent interaction with Subject of any of the senior Captains in the Strike Group. [FOIA EX (b)(6) & (b)(7)(c)] observed that Subject is "firm with people" but he had "never heard him attack an individual" or swear at an individual. [FOIA EX (b)(6) & (b)(7)(c)] testified that Subject "doesn't use a lot of four letter words. In fact, he rarely uses those. He is pretty self-controlled about that." Regarding VTCs, [FOIA EX (b)(6) & (b)(7)(c)] could not recall a time when any Warfare Commander was openly reprimanded by Subject. [FOIA EX (b)(6) & (b)(7)(c)] noted that Subject can be very forceful when he explains to people why something they brought to him was not acceptable. He said in doing so, however, Subject was careful to make his remarks about the product, not the individual presenting the product. On a personal level, [FOIA EX (b)(6) & (b)(7)(c)] said that he had only had one heated exchange with Subject but "We worked through that, and I am good to go."

18. The foregoing testimony from [FOIA EX (b)(6) & (b)(7)(c)], [FOIA EX (b)(6) & (b)(7)(c)], and [FOIA EX (b)(6) & (b)(7)(c)], showed that Subject could be very difficult to work with at times. Each in their own way testified that Subject's style of leadership was not their style of leadership, but they did not say he was abusive. It was clear to us from their respective testimonies, however, that these senior officers were extremely reluctant to say anything that might appear disrespectful or be considered criticism of their superior. Their loyalty in this regard is admirable but, reading between the lines, we believe they were individually uncomfortable with the entire situation while Subject was in charge and simply decided to put on professional blinders and focus on the mission at hand.

**Subject's Testimony about His Treatment of Subordinates**

19. Subject testified that allegations of him being abusive did not happen in the manner described by Complainant. In his 19 November 2012, written statement, Subject stated:

I reject the allegation that my leadership style is abusive. I have never threatened to adversely affect any officer's career. I have not publicly reprimanded officers. While I have used profanity on occasion to emphasize a point, it was never to demean or attack any person under my command.

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Confrontation about FOIA EX (b)(6) & (b)(7)(c) handling of STENNIS

20. Complainant reported he had a confrontation with Subject on 6 October 2012, while he was on the navigation bridge of STENNIS directing the ship's movements during its Strait of Malacca transit. Complainant stated, Subject "blew up at me and launched into a tirade in front of my junior personnel. [It] was a clear attempt to debase me in front of my bridge team at a very critical time of the transit."

21. Subject testified that during the STENNIS's transit of the Strait of Malacca he observed STENNIS proceeding through the strait at what he felt was an excessively high and unsafe rate of speed for the prevailing traffic density. Subject said he observed STENNIS during two particularly close, Closest Point of Approach (CPA), events with large tanker vessels. He said, at no time did STENNIS provide the whistle signals or radio calls required by International Law to explain STENNIS maneuvers to the other vessels within visual range of STENNIS. Subject testified he was "mortified" by how STENNIS was being maneuvered by Complainant.<sup>1</sup>

22. Explaining his decision to go to the navigation bridge and speak with Complainant during the transit as opposed to waiting until some other time, Subject testified:

I was mindful of the ARLEIGH BURKE incident in Norfolk, where the Commodore was on the bridge, knew the ship was standing into danger and he did nothing. And it was my responsibility as Senior Officer Present Afloat to weigh-in.<sup>2</sup>

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<sup>1</sup> International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) are published by the International Maritime Organization (IMO), and set out, inter alia, the "rules of the road" or navigation rules to be followed by ships and other vessels at sea in order to prevent collisions between two or more vessels. COLREGS specify required signals between power-driven vessels when they are in sight of one another. For example, Rule 34 states that "when vessels are in sight of one another, a power-driven vessel underway, when maneuvering as authorized or required by these Rules, shall indicate that maneuver by the following signals on her whistle: one short blast to mean 'I am altering my course to starboard'..." Rule 34 also states that "a vessel that reaches agreement with another vessel in a head-on, crossing, or overtaking situation, as for example, by using the radiotelephone as prescribed by the Vessel Bridge-to-Bridge Radiotelephone Act..., is not obliged to sound the whistle signals prescribed by this Rule, but may do so."

<sup>2</sup> USS ARLEIGH BURKE (DDG-51) ran aground on 15 May 2007. At the time of grounding, Commander, Destroyer Squadron TWO (CDS-2), the ship's Immediate

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23. Subject testified he went to the bridge and motioned for the individuals in close proximity to Complainant to step away so that he could speak with Complainant privately. Subject said that he spoke in a quiet voice and briefly explained his concern for the safety of STENNIS to Complainant and then ordered him to slow STENNIS saying: "[REDACTED], slow the fuck down."

24. We interviewed several ships' company officers who were present on the STENNIS navigation bridge. [REDACTED]. [REDACTED], USN, is the STENNIS [REDACTED]. [REDACTED] told us that the conversation between Subject and Complainant lasted only 15 to 30 seconds. He testified he couldn't clearly hear what was said from where he was standing, 15 - 20 feet away. [REDACTED] said although he could not hear what was said by the Subject to Complainant, Complainant was facing his direction and "looked like he was being reprimanded." He said Complainant had a look of "shock" on his face during the encounter with Subject.

25. [REDACTED], USN, is assigned as an Officer of the Deck (OOD) onboard STENNIS. [REDACTED] testified about Subject coming to the bridge and speaking to Complainant stating:

I saw the [REDACTED] and the Admiral have a brief exchange of words. I couldn't make out anything that they were saying, because I was on the other side of the bridge. It was brief, and the Admiral left the bridge.

...

The Admiral came over, stood right next to the [REDACTED]. I was running through my checklist for man overboard, so I only noted [the Subject when he was announced onto the bridge]. It's not abnormal for the Admiral to come on the bridge during the special evolution.

26. The [REDACTED], [REDACTED], USN, said that he thought the conversation between Subject and Complainant lasted somewhat longer than [REDACTED] and [REDACTED] recalled

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Superior in Command (ISIC) was aboard. CDS-2 was criticized in the investigation that followed the grounding for not having recognized a dangerous situation as it developed.

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the event. He said the Subject spoke to Complainant for about "two minutes". [REDACTED] said he was busy at his station and did not hear what was said between them but agreed with our proposition that the conversation was pointed and at some point became one way.

27. [REDACTED] was the [REDACTED] during the transit. He was stationed on the Flag Bridge with Subject and corroborated Subject's testimony about how STENNIS was being maneuvered.<sup>3</sup> [REDACTED] said that there were close CPAs between STENNIS and other ships transiting the strait. He further stated that Subject expressed his opinion "that STENNIS was not conforming with the rules of the road as [the rules] provide direction for safe speed." [REDACTED] went on to say that Subject was "incredulous about the way that the ship was maneuvering. He was trying to figure out an appropriate way to get the [REDACTED] attention to get him to slow down."

28. We note here that, as [REDACTED], [REDACTED] issued an order to STENNIS and MOBILE BAY as they approached the entrance to the strait that the ships were to "maneuver independently to avoid shipping." Under this guidance, each ship would be expected to adjust its course and speed to maneuver safely within the traffic separation scheme.

29. [REDACTED], USN, is assigned as CCSG-3 Staff [REDACTED]. [REDACTED] testified he was on the Flag Bridge supporting Subject during the strait transit. He said he had a clear view of STENNIS Voyage Management System (VMS) display and observed STENNIS depart the left side of the vessel traffic separation scheme and cross through the opposing traffic separation lane to the left while maneuvering around slower traffic in the Strait of Malacca. [REDACTED] noted that VMS showed STENNIS going 25 knots at the time.

30. [REDACTED], USN, is assigned as CCSG-3 Staff [REDACTED]. [REDACTED] testified that prior to the transit and upon learning that STENNIS planned a 25 knot transit through the strait, Subject ordered him to have the ship pull back their transit plan and resubmit with a lower Speed of

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<sup>3</sup> Flag Bridge on STENNIS is one level below the Navigation Bridge the location from which ship's movements are controlled by the ship's Captain through his Officer of the Deck. From Flag Bridge, Subject had a nearly identical view of ocean waters adjacent to STENNIS as did Complainant one level above.

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Advance (SOA). Subject subsequently approved a 22 Knot SOA. FOIA EX (b)(6) & (b)(7)(c) said that Subject addressed safe transit speed at Warfare Commander meetings in the days leading up to the strait transit and made sure everyone knew "that Safety of Navigation overrides any SOA and that he was OK with arriving at the next port a day late if it meant we got there safe. There was no pressure to go fast."

31. Before leaving this topic, we consider how the conflicting testimony about the encounter fits together. Complainant alleged that Subject confronted him on the bridge during STENNIS's Strait of Malacca transit and "blew up at [him] and launched into a tirade in front of FOIA EX (b)(6) & (b)(7)(c) junior personnel." Testimony from FOIA EX (b)(6) & (b)(7)(c) and FOIA EX (b)(6) & (b)(7)(c) makes clear that the Subject did not blow up or yell at Complainant, however, their testimony also makes clear that from their perspective their FOIA EX (b)(6) & (b)(7)(c) was having a one-way, senior to subordinate, conversation about how the ship was being maneuvered during the strait transit.

#### Subject's Alleged Derisive Comments to Complainant

32. Complainant also alleged that during two meetings Subject told him that he was "nothing but a fucking shoe who only manages an airport 12 hours a day," or words to that effect. Complainant stated that Subject's comments were "inappropriate and derisive" and "designed to demean" him. He further alleged that Subject made this reference about him multiple times during the two separate meetings. Complainant added that Subject made the comments during private meetings at which there were no witnesses.<sup>4</sup>

33. Subject denies having called Complainant a "fucking shoe." He stated that he had two separate meetings with Complainant following the Strait of Malacca transit at which time he attempted to impress upon complainant his concern for how STENNIS was being handled with regard to the international navigation rules. Subject testified:

What I said to him was ... When you're doing flight ops, you're a privileged vessel. You have priority over a power driven vessel in your way. My words were, 'When

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<sup>4</sup> The term "shoe" (or Black Shoe) is a colloquialism for a Surface Warfare Officer. Subject is a Surface Warfare Officer. Complainant, a Naval Aviator, wears brown shoes.

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you're not doing flight ops, you're just, another asshole on the water. And the same rules apply to you as apply to everybody else. Okay?' [I] never called him a shoe. [I] never said all you do is run an airport 12 hours a day. I don't know where he's getting that.

34. Subject testified that he met with Complainant for about an hour on October 10, 2012, to review the navigation rules prescribed in COLREGs and to specifically address his concerns about how Complainant drove STENNIS. Subject testified that he observed Complainant drive STENNIS as if it were always "... a vessel restricted in its ability to maneuver" as defined by the rules.<sup>5</sup>

35. Subject testified that on 11 October 2012, he met with Complainant a second time and told him that he discussed his concerns regarding Complainant's handling of STENNIS during its recent Strait of Malacca transit with VADM David H. Buss, USN, the Type Commander. Subject said that Complainant "just blanched" when told of the conversation with VADM Buss.

36. Here again, we are faced with conflicting testimony; the Complainant's account and the Subject's recollection do not match. Complainant alleges that in these two private conversations Subject made "inappropriate and derisive" comments "designed to demean" him. We determined that these meetings were called by the Subject in order for him to speak with Complainant about his handling of STENNIS. We were unable to reconcile their conflicting testimony about their private conversations. While these conversations were no doubt spirited, and by either account Subject addressed Complainant in derogatory terms, it was within Subject's command authority to provide a private critique of the performance of his subordinate.

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<sup>5</sup> A "vessel restricted in her ability to maneuver" means a vessel which, due to the nature of her work, is restricted in her ability to maneuver as required by [COLREGs] and is therefore unable to keep out of the way of another vessel. The term "vessels restricted in their ability to maneuver" shall include but not be limited to: a vessel engaged in the launching or recovery of aircraft...

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## Subject's Alleged Mistreatment of Junior Personnel

37. Based on our interviews, we learned of interactions Subject had with junior personnel that we considered in making our determination about whether Subject engaged in abusive behavior. The first of these incidents occurred in Subject's office when his staff [FOIA EX (b)(6) & (b)(7)(c)] Specialist was called in to brief him about a particular administrative matter related to his preferred method of receiving tax exempt pay in the war zone. [FOIA EX (b)(6) & (b)(7)(c)], USN, [FOIA EX (b)(6) & (b)(7)(c)] to Subject testified that [FOIA EX (b)(6) & (b)(7)(c)], USN, from CCSG-3 Staff and [FOIA EX (b)(6) & (b)(7)(c)], USN, from the STENNIS, briefed Subject about his tax exempt pay options. According to [FOIA EX (b)(6) & (b)(7)(c)], they were not able to explain these options to Subject's satisfaction. Before he dismissed [FOIA EX (b)(6) & (b)(7)(c)], [FOIA EX (b)(6) & (b)(7)(c)] and [FOIA EX (b)(6) & (b)(7)(c)], Subject tore up the paperwork which had been provided to him for signature. [FOIA EX (b)(6) & (b)(7)(c)] said [FOIA EX (b)(6) & (b)(7)(c)] was visibly shaken after their meeting with Subject.

### Testimony of [FOIA EX (b)(6) & (b)(7)(c)]

38. [FOIA EX (b)(6) & (b)(7)(c)] submitted a written statement about the incident. She wrote:

The Admiral seemed fairly agitated before we even got started! But, [FOIA EX (b)(6) & (b)(7)(c)] explained the options and why they were available to the Admiral and not others such as me and [FOIA EX (b)(6)].

[Subject] asked a few questions while holding the form. [FOIA EX (b)(6) & (b)(7)(c)] tried to answer the questions. The Admiral did not seem to understand. The Admiral turned to me and said "look, just explain it to me like you would anyone else." I tried to re-iterate what [FOIA EX (b)(6) & (b)(7)(c)] was trying to explain. It appears he still didn't understand.

Then he asked [FOIA EX (b)(6) & (b)(7)(c)] "...," do you recommend that people do this?" [FOIA EX (b)(6) & (b)(7)(c)] told him "no." At that point the Admiral was angry, he held up the form and asked "why was I told to sign this then!" I said to [Subject] that he did NOT have to sign it... this was an option NOT a requirement and that we were there just to let him know his options.

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He began to rip up the paper and said "Ok, thank you"...and we were dismissed.

### Subject's Testimony

39. Subject admitted tearing up the paperwork. He testified, "there was no attempt on my part to infer any sort of emphasis or drama on tearing that paper up. I just tore it up."

### Testimony of [FOIA EX (b)(6) & (b)(7)(c)]

40. [FOIA EX (b)(6) & (b)(7)(c)], USN, is [FOIA EX (b)(6) & (b)(7)(c)] for Subject. She testified about her day-to-day interaction with him. [FOIA EX (b)(6) & (b)(7)(c)] testified she heard Subject elevate his voice to emphasize a point he was trying to make on a number of different occasions, but she said that when he did so it was not to the point of yelling.

41. [FOIA EX (b)(6) & (b)(7)(c)] testified about conversations she had with various people aboard STENNIS that came up to her and asked about her experience working for Subject. She stated:

So now when you go through the ship, even actually probably more than a month ago, walking through the ship, you know, you have Sailors who say, "I heard he's real hard to work for," you know, or "I don't see how you do it."

You know, people say that.

And I always say, "He's human like anyone else. I don't know what you're saying, you know."

### Testimony of [FOIA EX (b)(6) & (b)(7)(c)]

42. [FOIA EX (b)(6) & (b)(7)(c)], USN, is the [FOIA EX (b)(6) & (b)(7)(c)] for CCSG-3. He initially reported to CCSG-3 as [FOIA EX (b)(6) & (b)(7)(c)] for Subject but was reassigned to his current duties not too long into his tour as [FOIA EX (b)(6) & (b)(7)(c)]. About his change in duties, [FOIA EX (b)(6) & (b)(7)(c)] testified:

Me and the Admiral weren't exactly seeing eye to eye as far as just our daily kind of interactions with each other.

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And he had made the statement, when he first got here, that he compared it to a no fault marriage, and that, you know, we'll try it for a couple months, and for whatever reason that I had any issues with him or he had any issues with me, we would change jobs.

Obviously I would change jobs, and you know, it would be not detrimental or anything, it's just sometimes personalities don't work out together.

43. FOIA EX (b)(6) & (b)(7)(c) testified that there were times Subject yelled at him. He said he also observed Subject yell at other members of the Strike Group staff and the Warfare Commanders. He said FOIA EX (b)(6) & (b)(7)(c) "seemed to take the brunt of it," but later FOIA EX (b)(6) & (b)(7)(c) became a target for Subject's yelling. FOIA EX (b)(6) & (b)(7)(c) stated that there was "no justification in yelling at someone."

44. FOIA EX (b)(6) & (b)(7)(c) stated:

It would seem to me that while -- though he's difficult to work for... I don't even know how much people want to talk to him anymore. I don't know how much that would necessarily impact the ship's and you know, the Air Wing's ability to continue to do the mission as a whole, I think.

So in that regard, I would say it's not impacting. I mean, we can still keep doing the job we're out here to do. [He] just makes it more difficult.

#### Testimony of FOIA EX (b)(6) & (b)(7)(c)

45. FOIA EX (b)(6) & (b)(7)(c) testified that he took over from FOIA EX (b)(6) & (b)(7)(c) as FOIA EX (b)(6) & (b)(7)(c) just prior to the Strike Group's deployment in August. He said prior to deployment he and FOIA EX (b)(6) & (b)(7)(c) shared quarters. FOIA EX (b)(6) & (b)(7)(c) testified:

There were many times, since we did room together, when FOIA EX (b)(6) & (b)(7)(c) would come from work, and he would go on a venting session of what happened during that day.

So when I got told I was going to be the FOIA EX (b)(6) & (b)(7)(c) needless to say, I had had my druthers about it....

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46. [FOIA EX (b)(6) & (b)(7)(c)] said Subject vacillated about how the day-to-day management of his schedule would be accomplished and how staff products would be presented to him for his consideration and approval. Those changes resulted in a great deal of frustration for [FOIA EX (b)(6) & (b)(7)(c)] and, in [FOIA EX (b)(6) & (b)(7)(c)] opinion, others on the staff and in the Strike Group leadership team. He said members of the Strike Group staff tried to avoid contact with Subject because they were not sure how they might be received by him.

47. Providing an example of the staff's reaction to Subject's general demeanor, [FOIA EX (b)(6) & (b)(7)(c)] testified:

I sit right next to the [FOIA EX (b)(6) & (b)(7)(c)], who sits next to the [FOIA EX (b)(6) & (b)(7)(c)], and we would always, you know, something would come up, bring it to the boss.

And it would be, "I'm not taking it." You know, nobody wanted to go in there. Because you never knew what was going to happen.

48. [FOIA EX (b)(6) & (b)(7)(c)] informed us during his interview that he had decided to submit his letter of resignation from Naval Service. He testified that it was more than just his treatment by Subject, which factored into his final decision to leave active duty. He testified, however, that working for Subject "made it very easy to write that letter and submit it."

#### Testimony of [FOIA EX (b)(6) & (b)(7)(c)]

49. [FOIA EX (b)(6) & (b)(7)(c)], USN, is the STENNIS [FOIA EX (b)(6) & (b)(7)(c)]. He summarized his own opinion about Subject's leadership style and testified:

If you're asking me do I think he's crossed the line that would get him fired, I'm not sure about that....

I'll make the statement that [Subject's style] is not the leadership style that the Navy currently preaches and that we're trying to pursue, that, you know, what we want in a leader, you know, the things that we try to hold dear, I don't think he's got it, I mean, but I mean if you fired everybody for being a jerk, we wouldn't have very many people in the Navy.

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## Subject's Language in Speeches and Written Communications

50. Complainant alleged that, in speeches to Strike Group personnel and written guidance to the Commanders and Commanding Officers of the Strike Group, Subject used profanity and made overly aggressive statements. He quoted two examples:

And should they (Iran) be so misguided as to take action against us, we will cut out their hearts and throw them on the ash heap of history. We will crush them.

... kick the living shit out of the enemy.

### July 2012 All Hands Call

51. In July 2012, while STENNIS was at sea and undergoing its sustainment training exercises (SUSTEX), Subject received unofficial confirmation from VADM Gerald R. Beaman, USN, Commander, U.S. THIRD Fleet, that STENNIS, along with MOBILE BAY, would surge deploy to the Middle East in August 2012. Thereafter, Subject drafted and delivered a speech, which he marked as classified "SECRET," to notify his staff, members of the embarked Carrier Air Group and Destroyer Squadron, and the STENNIS crew that an early deployment was going to happen. Subject's speech was recorded, delivered to MOBILE BAY, and, subsequently, played for the MOBILE BAY crew as well.<sup>6</sup>

52. Subject's speech contained specific references to Iran and expressed his understanding of Iran's potential impact on the world economy should they take action to close the Strait of Hormuz from commercial traffic. Subject told his audience:

But this is what YOU need to know: the very survival of the United States is at risk if the Iranians have their way. This aircraft carrier, this Air Group and our cruiser were built with one purpose: to deter

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<sup>6</sup> NAVINSGEN N2 determined the information in the speech to be unclassified. Moreover, we determined that marking the unclassified text SECRET was a failure to follow procedures outlined in Chapter 4 of SECNAV M-5510.36, Department of the Navy Information Security Program. NAVINSGEN elected not to make this a separate allegation, however, and views this as an issue to be properly addressed by the Subject's chain of command. Subject's SCI indoctrinated status requires specifically relevant training on classification markings directed by SSO Navy in BANIF 05-012. The individual's Chain of Command should ensure he completes this training and then document that training in his security record.

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aggression - but should deterrence fail - to quickly defeat the enemies of peace and freedom. In other words, shipmates, this is why we have a Navy. So we're going.

53. Subject's speech also included:

Some of you are probably worried about something happening to us. Well don't. This is a well-seasoned team from Airman and Seaman to Admiral. We are well-equipped, well-trained and we have the love and support of the American people behind us. Compare that to our decrepit and corrupt adversary [Iran]. Their military is a house of cards—horribly under-capable as a result of crippling sanctions for over a decade. And should they be so misguided as to take action against us, we will cut out their hearts and throw them on the ash heap of history. We will crush them.

#### **September 2012 All-Hands Speech and Statement of Priorities**

54. In early September 2012, after the Strike Group sailed for its surge deployment, Subject delivered a second speech at an all-hands call in the STENNIS hanger bay. His second speech provided his audience with a historical perspective of the Middle East and offered an expanded discussion of the basic points he presented to Strike Group personnel in his first speech. In this speech, Subject stated the Strike Group should be prepared to "kick the living shit out of the enemy."

55. On 13 September 2012, Subject issued his "Peacetime and Wartime Priorities for JOHN C STENNIS Strike Group" in a written memorandum to the Commanders and Commanding Officers of the Strike Group. Under the heading, "Wartime Priorities," Subject wrote: "Kick the living shit out of the enemy." This section of the memorandum further stated:

If we train and operate like we're going to war, that will be easy. All we'll need is the permission.

We're sailing into history to make our mark. Never in our lifetime has there been such an important calling for a Strike Group. Secretary Panetta told you before we sailed that he was sending the best. You are the

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best, but we're only as good as our last dance. The world will be watching. Let's make America proud of us.

#### **Subject's Testimony about His All Hands Communications**

56. Subject testified that the purpose of his July speech was twofold. He wanted to make timely notification of the pending surge deployment to Strike Group personnel, particularly the junior personnel, so that they would have the maximum time possible to make plans with their families. He also wanted to provide Strike Group personnel with a clear reason they could understand for the STENNIS and MOBILE BAY having been selected to return to the Middle East after such a short period of time at home following their previous deployment.

57. Subject testified that he marked his July speech as classified SECRET when he drafted it in order to minimize the possibility that it would be shared prematurely outside the Strike Group. He stated that it did not contain any classified information.

58. Subject testified he used his second speech as an opportunity to convey some of his extensive knowledge about the theater to Strike Group personnel. He stated that in his previous assignment as the Deputy Commander of the U.S. FIFTH Fleet, he was afforded specific insights about the region. Subject said he believed sharing his insights with the Sailor on the deck plate would help them better understand the connection between their day-to-day work and the world around them. Subject also testified he used the second speech as an opportunity to discuss his Commander's wartime priorities. In his speech he stated:

But some of you are thinking - this isn't exactly what you said on the IMC back in July... What about cutting out the hearts of our enemies and throwing them on the ash heap of history?

Well, that brings me to my wartime priorities. If our adversary should be so unwise as to initiate hostilities with this Strike Group, and the President decides to do something in return, those three priorities neck down to one.

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Kick the living shit out of the enemy. If we train and operate like we're going to war, that will be easy. All we'll need is the permission.

We're sailing into history to make our mark. Never in our lifetime has there been such an important calling for a Strike Group.<sup>7</sup> Secretary Panetta said last week that he was sending the best. You are the best, but we're only as good as our last dance. The world will be watching. Let's make America proud of us.

59. Subsequent to providing testimony, Subject sent a written statement, dated 19 November 2012, to the Naval Inspector General. In his statement, Subject wrote that in addition to motivating Strike Group personnel by providing them with a clear purpose for having to deploy again so soon, he was trying to guard against the possibility that Strike Group personnel might develop a complacent, "been there done that," attitude. Subject further explained his thinking by stating: "Complacency leads to distraction. In our profession, distraction can have tragic consequences."

#### **Witness Testimony about Subject's All Hands Remarks**

60. We interviewed a total of 43 witnesses including the Strike Group's Warfare Commanders and key members of their respective staffs, as well as junior officers and junior enlisted personnel from STENNIS, the embarked Air Group and Destroyer Squadron. We also interviewed the FOIA EX (b)(6) & (b)(7)(c), FOIA EX (b)(6) & (b)(7)(c) and FOIA EX (b)(6) & (b)(7)(c) of MOBILE BAY. Most of those we interviewed were questioned specifically about their reaction to the two speeches made by Subject. Virtually all the witnesses we spoke to about the speeches, regardless of their rank, said they believed Subject delivered his speeches to provide them with motivation for their surge deployment. Some of those we interviewed questioned Subject's choice of words stating that they did not recall another Flag Officer using profanity when speaking publicly. A few of the officers assigned to STENNIS expressed concern that Subject's remarks crossed "the line" or could be inferred to mean that Subject intended to lead the Strike Group in an overly aggressive manner.

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<sup>7</sup> At the time of Subject's speeches, there was considerable public media coverage regarding renewed statements by various high-level Iranian officials that Iran might close the Strait of Hormuz as sanctions against their country continued to bite at Iran's economy.

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61. We considered the words that Subject spoke and wrote, his audience, his testimony regarding the purpose for the speeches and his commander's priorities memorandum, and the testimony of witnesses who heard the speeches and read the memorandum, including witnesses who, like the Complainant, expressed concern with the general tone of what Subject said and wrote.

62. With regard to whether Subject's statements "we will cut out their hearts and throw them on the ash heap of history," "will crush them," and "kick the living shit out of the enemy," we determined that these statements were hyperbolic in context and not inappropriate for the intended audience.

### Use of Profanity and Middle Finger Gesture at Foc'sle Follies

63. Complainant alleged, and witnesses stated, that on the night of 16 October 2012, Subject attended Carrier Air Group NINE's Foc'sle Follies and at the conclusion of the follies made a presentation during which he "waved his middle finger to everyone in the crowd" and then stated, "I don't know who I'm going to fuck first or hardest, VFA-14 or VFA-41."<sup>8</sup> Complainant added that the statements were made in jest and directed at the squadrons that had mocked Subject during skits.

64. Witnesses testified that air wing and other officers from Subject's staff and STENNIS were present at the Foc'sle Follies.

65. Subject admitted that he made the gesture and testified he recalled saying "I don't know who I'm going to fuck more [VFA 14 or VFA 41], but we've got eight months to figure it out." He testified that his "goal was to turn around and give it to them every bit as much as they gave it to [him]" in their respective skits.

66. Regarding the middle finger display, Subject testified:

And so I got up, and I said, "When I was flying with FOIA EX (b)(7) E he told me a greeting that you guys use when you're waving to each other in the airplane," and I

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<sup>8</sup> Foc'sle Follies is a tradition in Naval Aviation. At the end of each line period, the officers from the squadrons embarked aboard the carrier gather to recognize the pilots that performed the best, and to make fun of each other. It is common for the Strike Group Commander, CO of the carrier, and/or Air Wing leadership to be made fun of during one or more skits performed by squadron personnel. Witness testimony in this case established Subject and others were made fun of during the October 16<sup>th</sup> follies held onboard STENNIS.

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indicated with my middle finger. And raucous laughter. This is exactly what they want. And I was a war fighter talking to other war fighters.

67. Regarding the comment to the members of VFA 14 and VFA 41, Subject testified:

And then I said -- the two skits that had pilloried [me] the most came from guys in squadron VFA 41 and VFA 14. And that is [when] I said... "I don't know who I'm going to fuck more, but we've got eight months to figure it out," is what I said at the end of that.

68. Subject testified that he also complimented the crews and told them, "You guys did spectacular on our carrier certification" and added, "we're going to have a great cruise. Thanks for this."

69. Subject also testified that his part at the Foc'sle Follies "was great" and the feedback he got "from [FOIA EX (b)(6)] and the [FOIA EX (b)(6)] was it was outstanding. 'You couldn't have done better', 'It was out of the park'." Subject also said that he did not believe there was any problem with his displaying his middle finger or his statement in the context of the Foc'sle Follies. He said, "That somebody would misinterpret this is beyond me."

70. Subject testified that when first invited to the Foc'sle Follies he said he would not attend. He said that he understood that at these events "they give each other a little hard time, sometimes, a little too much. I didn't think as a 'shoe' I would like it." He said he later changed his mind and agreed to attend, but that he had provided guidance that there were three things he wanted not discussed, "Gender, race, sexual orientation... my guidance was don't embarrass the Navy."

71. Subject also provided context behind his making the gesture and the comment. He testified "It was an attempt to convey comradeship to people that interacted in this fashion." He stated:

We live in a culture where we ask people to risk their lives. Especially the pilots that land those machines on those carriers. They have a culture. A culture based on mutual teasing. Giving each other a hard

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time. For the purposes of my presentation of Foc'sle Follies, I was adapting to that culture.

72. We interviewed some of the officers present at the Foc'sle Follies. For the most part, the witnesses testified that they were not offended and understood Subject was responding to skits that poked fun at him. One witness stated, "he basically was showing that he can take that ribbing and he can throw it right back." Other witnesses testified that they did not see the gesture or recall the comment.

73. On the other hand, one Commander testified:

My sense was not that he was he was angry. My sense was that he was trying to bring himself to the level of the lieutenants, the JO's [junior officers] at Follies. . . . I really felt like that probably was inappropriate, and that as Strike Group Commander . . . he's supposed to be setting the example, not devolving down to that level.

74. Subject's conduct at Foc'sle Follies is not disputed.

75. Most of the witnesses we interviewed about the Foc'sle Follies testified they were not offended by the gesture he made or the words he spoke. Their testimony aligned with Subject's testimony that he only intended to "give it to them every bit as much" as they gave it to him in their skits. We were more persuaded, however, by the testimony of the Commander who stated that Subject "was trying to bring himself to the level of the lieutenants, the JO's." We agreed with the witness that Subject should have been setting the example, "not devolving down to that level".

76. Moreover, Subject's language at Foc'sle Follies illustrates the risk any Commander assumes by the use of profanity in public speech, even in instances where a reasonable person might not find it objectionable. A Commander who does so may find it difficult to thereafter correct a subordinate who uses similar language, even in situations where it is clearly inappropriate, without justly being accused of setting a double standard.

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## Alleged Racially Offensive Email

77. On 5 October 2012, using his unclassified government email account, Subject sent an email to six White senior members of Strike Group leadership - FOIA EX (b)(6) & (b)(7)(c), FOIA EX (b)(6) & (b)(7)(c), and FOIA EX (b)(6) & (b)(7)(c); FOIA EX (b)(6) & (b)(7)(c), USN, STENNIS FOIA EX (b)(6) & (b)(7)(c); FOIA EX (b)(6) & (b)(7)(c), USN, FOIA EX (b)(6) & (b)(7)(c), CAG NINE; and Complainant.<sup>9</sup> Attached to the email was a photograph Subject took of an enlisted African-American male Sailor standing on the nose of an EA-6B aircraft. The Sailor pictured was standing astride the refueling probe on the nose of the aircraft preparing to place a protective (weather) cover over the end of the refueling probe. In his emails, Subject wrote comments to suggest to the reader that the refueling probe was a giant penis emanating from the Sailor.

78. Subject wrote in his first email conveying the picture he had taken, "I believe this [picture] speaks for itself." In a second email to the same six officers, Subject wrote: "I see a photo contest. First up: It's *twoo*, its *twoo* [italics added]...."

79. Subject testified that "it's *twoo*, it's *twoo*..." is dialog from the movie Blazing Saddles. He said the dialog from the movie is an "off-color joke... it's a sexual allusion..." and it's about "race."

80. Blazing Saddles, a 1974 Mel Brooks movie, was a parody of the Western movie genre. In the movie, Madeline Kahn plays the part of Lili von Shtupp, a saloon worker hired to seduce Bart, the town's sheriff, played by Cleavon Little. In one scene, Lili, who speaks with a German accent, asks Bart, who is African-American, "Is it *twoo* what they say about you people are gifted?" Next, there is the sound of a zipper, and Lilli exclaims, "Oh, it's *twoo*, it's *twoo*, it's *twoo*, it's *twoo*."

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<sup>9</sup> We contacted Navy Personnel Command and requested ethnicity/race determination for these six officers. Assistant Commander, Navy Personnel Command for Career Progression (PERS-8) stated that these officers self-reported in their official personnel file that they were White, No Ethnicity, with the exception of Complainant who is listed as White, Mexican.

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## Comments about Minority Flag Officers

81. Complainant alleged that in early July 2012, at a Warfare Commanders' social function prior to deployment, Subject stated that the primary reason ADM (b)(6) &(7)(c), VADM (b)(6) &(7)(c) and RADM (b)(6) &(7)(c) had been "assigned to their current positions and rank [was] strictly because of their ethnicity, thus political."

82. Complainant testified that Subject told him that minority officers were "bringing down" the quality of the Surface Community's pool of Flag Officers. He testified that Subject said to him:

The reason why the Surface Community has so many [minority] Flag Officers and not the Aviation Community, is because the Aviation Community takes care of that. They either can't get in, or they're not getting through the flight school.

83. Complainant testified that Subject also spoke improperly about minority Flag Officers during a dinner conversation they had with FOIA EX (b)(6) & (b)(7)(c) when the STENNIS was conducting a port visit in Phuket, Thailand. Complainant and FOIA EX (b)(6) & (b)(7)(c) went to dinner at a local restaurant. Complainant invited Subject to join them for dinner but he arrived after they had finished eating. Complainant alleged that after Subject joined them, he "again raised inappropriate issues with Navy leadership and minorities in positions of responsibility." Complainant further alleged that Subject stated in general terms "minorities were bringing down the Surface Community with too many minority Flag Officers."

84. FOIA EX (b)(6) & (b)(7)(c) testified that he recalled that Subject made remarks at the dinner in Phuket about VADM (b)(6) &(7)(c) and RADM (b)(6) &(7)(c). With regard to comments about VADM (b)(6) &(7)(c), FOIA EX (b)(6) & (b)(7)(c) testified that Subject stated that VADM (b)(6) &(7)(c) was not "very humble" in her comments for a news article about her recent promotion. FOIA EX (b)(6) & (b)(7)(c) recalled that in the news article VADM (b)(6) &(7)(c) stated she had been promoted to Vice Admiral "despite the efforts of others" and "despite some barriers."

85. FOIA EX (b)(6) & (b)(7)(c) also testified that Subject stated that VADM (b)(6) &(7)(c) minority status may have aided "in her speed of selection" to three stars. FOIA EX (b)(6) & (b)(7)(c) testified that

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Subject commented that because of her minority status VADM (b)(6) & (7)(c) "may not have had to cross as many hurdles in the same fashion to get where she was at."

86. FOIA EX (b)(6) & (b)(7)(c) testified that at the dinner Subject also spoke about RADM (b)(6) & (7)(c) "in a line of discussion of diversity of Flag Officers."

87. FOIA EX (b)(6) & (b)(7)(c) also stated that at the dinner there was "a general reference to minority precepts that I'm not familiar with, but I'm certain that there are some -- something in precepts probably for Flag [Officers]." FOIA EX (b)(6) & (b)(7)(c) stated that the discussion "was regarding diversity and the diversity opportunity in -- I guess possibly [Subject's] frustration with that -- and I don't know in what sense."

88. FOIA EX (b)(6) & (b)(7)(c) added that he felt uncomfortable about having the conversation and he was surprised that Subject spoke the way he did because he perceived the remarks as a "slightly borderline conversation... regarding diversity." FOIA EX (b)(6) & (b)(7)(c) said he was left with the impression that Subject did not believe VADM (b)(6) & (7)(c) and RADM (b)(6) & (7)(c) "were the highest performing Flag Officers."

89. FOIA EX (b)(6) & (b)(7)(c) testified that after Subject departed, he and Complainant spoke about Subject's remarks. FOIA EX (b)(6) & (b)(7)(c) testified:

But [FOIA EX (b)(6) & (b)(7)(c)] did say after the fact that, you know, he felt like that conversation was inaccurate and some of the statements [Subject] -- or the inferences [Subject] made he didn't agree with, and he had worked for both those Admirals. But he did not challenge [Subject] -- the statements at the dinner itself.

I don't believe there was any discussion over the comments being racist. The discussion as I recollect it was regarding diversity and the diversity opportunity in -- I guess possibly [Subject's] frustration with that, that -- and I don't know in what sense. I mean, I can't speak for that.

But I don't -- that's -- and that's what I recollect. And also in the follow-on conversation with FOIA EX (b)(6) & (b)(7)(c)

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there was -- at no point was it brought up that those were racist comments.

90. FOIA EX (b)(6) & (b)(7)(c) was questioned about whether or not he had ever heard Subject state that an African-American Flag Officer was promoted based on race and not ability. FOIA EX (b)(6) & (b)(7)(c) testified:

I don't think he has ever made a serious remark in that regard... If I have heard remarks made like that, it is, I'm sure it was in jest.

91. FOIA EX (b)(6) & (b)(7)(c) also testified that Subject, "one or two times," made statements indicating he believed that in some instances "someone was given a little leg up based on sex or race" for Flag Officer promotions. FOIA EX (b)(6) & (b)(7)(c) highlighted that the comments were not pejorative, but "more of a comment of, 'This is the reality,' versus, 'This is something I can't live with'."

92. FOIA EX (b)(6) & (b)(7)(c) testified about a conversation he had with Subject in September 2012 during which they discussed promotion opportunities to Flag Officer. FOIA EX (b)(6) & (b)(7)(c) said he did not place any particular significance on their discussion; it was, in his words, "just guys shooting the breeze about the Flag selection process, how narrow it was." FOIA EX (b)(6) & (b)(7)(c) stated that Subject and he spoke specifically about the promotion opportunities of the Strike Group Major Commanders. He testified:

There is a little more opportunity for Air Flags than there were for Surface Flags, and then we -- that is when we got into the -- you know, 'There probably is going to be a diversity select on that Surface board, which would further narrow opportunities for maybe some of our guys later down the road,' so it was just a discussion on available slots, and there was no -- I didn't attach any big racial connectivity to it other than it was just the fact of life...

93. Subject denied ever having made a statement that was racially based about any Flag Officer.<sup>10</sup> He specifically denied being disrespectful of ADM (b)(6) & (7)(c) and RADM (b)(6) & (7)(c).

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<sup>10</sup> Subject testified on November 8, 2012.

94. Subject testified that he recalled one conversation with Complainant about VADM (b)(6) &(7)(c), however, he could not recall with certainty when their conversations took place. Subject testified he told Complainant how two of his friends "didn't fare well at [VADM (b)(6) &(7)(c)] hands."

95. In his 19 November 2012, written statement, Subject provided additional information regarding comments he made to Complainant about VADM (b)(6) &(7)(c). He wrote:

[S]ometime in the spring or summer 2012, I expressed my belief and disappointment that VADM (b)(6) &(7)(c) had ended the careers of two friends of mine... Both gentlemen are friends of mine, and I have found both to be outstanding Naval officers. They both served under VADM (b)(6) &(7)(c) while in major command, and both received paper that effectively ended their chances for further promotions. In retrospect, I recognize that having this conversation with one of my subordinates was unwise, and I regret it. I will say, though, that at no time did I refer in a negative way to VADM (b)(6) &(7)(c) or (b)(6) &(7)(c) during this discussion or in any other discussion. I simply expressed my regret that two fine Naval officers had been disadvantaged, one of whom is an African-American.

96. Subject also admitted making comments about the news article written about VADM (b)(6) &(7)(c), but his recollection was that he made his comments about the article onboard STENNIS following a Warfare Commander meeting. Regarding his comments about VADM (b)(6) &(7)(c) and the article, Subject testified:

I'd read the article and I thought it was focused on self. And they tell us as Flags you're not supposed to allow articles to be written about self. And I expressed that opinion in the War Room.

And it was a petty comment on my part, a small-minded comment.

I don't consider what I said to be disrespectful. I considered it to be critical of the article.

97. In his 19 November 2012, written statement, Subject provided further information regarding the article written

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about VADM (b)(6) & (7)(c). He asserted that the only remarks he made about the article were made "sometime in September or October 2012" while aboard STENNIS. Subject wrote:

There was an article in CHINFO Clips titled (b)(6) & (7)(c) to become (b)(6) & (7)(c). I thought the article was frivolous and self-centered and expressed that sentiment. Again, I recognize my comments were petty. In no way, however, did I either state or imply that VADM (b)(6) & (7)(c) had arrived at her position because of demographics. My comments were rooted in frustration at an article that read as overly self-congratulatory. However, removed from the situation, I know that impression would have been best kept to myself and I regret the petty comments I made.

Upon reflection, I can clearly see that it was not appropriate for me to harbor opinions about a fellow Flag Officer and to express that opinion. How a reporting senior evaluates another officer is the purview of that reporting senior; it is not the business of other officers to second-guess that evaluation. Regardless of the disposition of this case, I will render an apology to VADM (b)(6) & (7)(c).

98. Subject denied having a conversation with FOIA EX (b)(6) & (b)(7)(c) in which he discussed Flag Officer selection board precepts. He denied that he specifically talked with FOIA EX (b)(6) & (b)(7)(c) about how the selection board precepts might impact Strike Group Warfare Commanders.

99. Subject also testified that he only spoke about ADM (b)(6) & (7)(c) with Complainant in the context of coordinating the Admiral's visit to STENNIS in September. Subject denied having made any remark that was disrespectful toward ADM (b)(6) & (7)(c).

100. Subject denied having ever said that minority Flag Officer selections were bringing down the Surface Line Community.

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**Allegation #1:** That Subject's conduct while executing his duties as Commander, Carrier Strike Group THREE from April 2012 until October 2012 did not adhere to the requirements of NAVREGS, Article 1131, Exemplary Conduct.

**Applicable Standard Allegation #1**

101. The original formulation of Article 1131 appears as Article 1 of the "Rules for the Regulation of the Navy of the United Colonies of North-America." Article 1 states:

The Commanders of all ships and vessels belonging to the THIRTEEN UNITED COLONIES, are strictly required to shew in themselves a good example of honor and virtue to their officers and men, and to be very vigilant in inspecting the behaviour of all such as are under them, and to discountenance and suppress all dissolute, immoral and disorderly practices; and also, such as are contrary to the rules of discipline and obedience, and to correct those who are guilty of the same according to the usage of the sea.<sup>11</sup>

102. John Adams is considered the principal author of the original Navy regulations. While he borrowed heavily from the Regulations of the British Royal Navy, the **requirement to demonstrate a good example** of honor and virtue appears unique.<sup>12</sup>

103. Article 1131, the current formulation of the exemplary conduct requirement, states:

All Commanding Officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical well-being and the general

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<sup>11</sup> Courtesy of Naval History and Heritage Command website. See <http://www.history.navy.mil/faqs/faq59-5.htm>

<sup>12</sup> Emphasis added.

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welfare of the officers and enlisted persons under their command or charge.

104. Using identical language, Congress gave Article 1131 a statutory foundation when it enacted 34 USC 265 in 1950, which became 10 USC 5947 in 1956. Congress enacted similar legislation applicable to the Army and Air Force in 1997.

105. Our last major discussion of Article 1131, in a senior official investigation conducted in 2003, indicated our belief that no discussion of the standard would be complete without reference to the following John Paul Jones description of a naval officer:

It is by no means enough that an officer of the navy should be a capable mariner. He must be that of course, but also a great deal more. He should be as well a gentleman of liberal education, refined manners, punctilious courtesy, ... Coming now to view the naval officer aboard ship and in relation to those under his command, he should be the soul of tact, patience, justice, firmness and charity. ... In his intercourse with subordinates he should ever maintain the attitude of the commander, but that need by no means prevent him from the amenities of cordiality or the cultivation of good cheer within proper limits. **Every Commanding Officer should hold with his subordinates such relations as will make them constantly anxious to receive an invitation to sit at his mess table, and his bearing toward them should be such as to encourage them to express their opinions to him with freedom and to ask his views without reserve.**<sup>13</sup>

#### Analysis - Allegation #1

106. Almost ten years ago, our analysis focused on a detailed discussion of individual incidents and attempted to use senior officer witnesses as subject matter experts in determining whether the subject's conduct demonstrated such character traits as virtue, patriotism, and honor in promoting the well-being and morale of his subordinates. As we again find it necessary to examine the core concepts underlying this standard, we think that, for the "good example" provision of the regulation, it sufficient to focus on the use of the adjective "exemplary" in

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<sup>13</sup> Emphasis added.

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the title of the regulation. Almost all of the definitions of this word that appear on dictionaries begin with the phrase "worthy of imitation" or "deserving of imitation." Similarly, the term "example" is defined as "one that serves as a pattern to be imitated."

107. So our analysis begins with asking a simple question. Do we believe Subject's conduct, viewed in its totality, is worthy or deserving of imitation?<sup>14</sup> Our answer, the principal reason we conclude this allegation is substantiated, is no.

108. We also observe that while the original formulation of the standard focused on the personal conduct of commanders and their subordinates, the current regulation and a key element in Jones description of the good officer also requires Commanding Officers "to promote and safeguard the morale, the physical well-being and the general welfare" of their subordinates.

109. With respect to this element of the regulation, the current Chief of Naval Operations (CNO), in his "Charge of Command" to prospective Commanding Officers dated 8 November 2011, stated:

The second accountability standard is trust. Our Navy's decentralized command and control structure is built on trust. Without trust, we cannot delegate authority. Without authority, we cannot fulfill our responsibilities. Therefore, without the delegation of authority, we simply cannot effectively operate our Navy. Trust is a fundamental building block of our command and control structure and our ability to achieve mission success.<sup>15</sup>

As a Commanding Officer, you must build trust with those Officers and Sailors under your command. You build trust through your character and in your actions which demonstrate professional competence, judgment, good sense, and respect for those you lead.<sup>16</sup> This trust can only be built through personal interaction on a daily basis...

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<sup>14</sup> This does not mean we believe the regulation requires "perfect conduct." We reach our conclusion after evaluating the pattern created by the totality of Subject's conduct rather than each individual incident.

<sup>15</sup> Emphasis in the original.

<sup>16</sup> Emphasis added.

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110. In another context, General Matthew Ridgway described the words of a fellow Corps Commander at the Battle of the Bulge, who, on meeting him as they entered they battle, said simply: I'm glad to have you on my flank. It's character that counts<sup>17</sup> ...

111. Recalling that the officer gave no further explanation of his words, General Ridgway explained none was necessary. Belief in a fellow officer's character "breeds confidence and success."

112. For the most part, the witnesses who had formed an opinion about Subject's leadership qualities, the senior officers with whom he interacted regularly and those junior personnel on his personal staff, left little doubt they would not choose to behave in the same manner as did their Commander. In short, we do not believe Subject consistently exhibited the character traits that would engender the trust and confidence of his subordinates, the second critical element of a leader's obligation to demonstrate exemplary conduct.

113. In addition to requiring Commanders to set a personal example of conduct and promote the morale and welfare of their subordinates, Article 1131 also requires Commanders to regulate the conduct of their subordinates. Commanders whose own conduct is not exemplary in a particular area will be unable to effectively critique a subordinate's similar conduct without losing trust, confidence, and respect.

114. As in 2003, we emphasize that Article 1131 is an aspirational standard. It establishes a standard to which all should strive to attain but which few always meet. But this does not mean officers who fail to adhere to the requirements of the article may not, or should not, be held accountable for their shortcomings. For the converse of General Ridgway's proposition also applies. When exhibited character traits do not breed confidence, a superior must take action. Such action, however, need not be punitive in nature. In allegation 2, we explain why we find Subject's conduct, while falling short of

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<sup>17</sup> This incident is recounted by Dr. Richard Swain in his article "Reflection on an Ethic of Officership" published in the Spring 2007 edition of Parameters.

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exemplary, does not amount to abusive conduct for which punitive action would be appropriate.

### Conclusion - Allegation #1

115. The allegation is substantiated.

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**Allegation #2:** That Subject's conduct while executing his duties as Commander, Carrier Strike Group THREE from April 2012 until October 2012, included instances of abusive leadership, in violation of U.S. Navy Regulations (NAVREGS) Article 1023, Abuse of Authority.

### Applicable Standard - Allegation #2

116. U.S. NAVY REGULATIONS, Chapter 10, Article 1023 - Abuse of Authority:

...

Persons in authority are forbidden to injure their subordinates by tyrannical or capricious conduct, or by abusive language.

### Analysis - Allegation #2

117. In order to substantiate an allegation under NAVREGS Article 1023, Abuse of Authority, there must be a finding that the Subject (1) injured his subordinates, and (2) such injury was caused by the Subject's tyrannical or capricious conduct, or by Subject's use of abusive language directed at subordinates. Injury is more than a mere hurting of someone's feelings.

118. While we have testimony that Subject changed his mind without an apparent reason for doing so, we did not conclude that his behavior was capricious and therefore abusive. Subject, did, on occasion, change his instructions about how he preferred to be briefed and what hours of the day he would or would not meet with those who had business to conduct with him. To many of those he dealt with daily, these changes seemed to be without an apparent motive. The testimony from his personal staff but in particular, FOIA EX (b)(6) & (b)(7)(c), FOIA EX (b)(6) & (b)(7)(c), and FOIA EX (b)(6) & (b)(7)(c), established these facts. We considered their testimony, and

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testimony provided by the senior officers we interviewed, and determined that the changes Subject made were not capricious but part of his struggle to adjust to a new staff, with whom he had not formed a complete working relationship, owing to his short time in command and their lack of time together at sea, before they deployed.

119. With regard to whether Subject's conduct was tyrannical, we did not substantiate the underlying facts of Complainant's allegations that Subject was abusive to his Warfare Commanders or debased Complainant in front of Complainant's junior staff. A preponderance of witness testimony did not support these allegations.

120. There was evidence that Subject did on occasion use profanity. Subject admitted using profanity when he spoke to Complainant in some of their meetings and in conversations with some of his other subordinates as well. Subject testified he "used profanity on occasion to emphasize a point, it was never to demean or attack any person under [his] command." Subject's assertion was supported by a majority of witness testimony.

121. Though Subject's conduct and language was at times less than ideal, we determined that his conduct was not tyrannical as contemplated by NAVREGS Article 1023. For purposes of NAVREGS Article 1023, tyrannical conduct is conduct that a reasonable person would find to be unjustly cruel, harsh, or severe; arbitrary or oppressive.

122. We conclude, therefore, considering the preponderance of witness testimony, that Subject did not, under the circumstances reported to us, violate NAVREGS Article 1023. Having reached this conclusion, however, we were reminded that Subject's behavior, while not abusive, was not, under the circumstances, the kind of behavior that we expect from an officer in command.

### Conclusion - Allegation #2

123. The allegation is not substantiated.

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**Allegation #3:** That Subject sent a racially offensive email to members of his command in violation of SECNAVINST 5350.16A, Equal Opportunity within the Department of the Navy and OPNAVINST 5354.1F, CH-1, Navy Equal Opportunity Policy.

**Applicable Standards - Allegation #3**

124. The two principal Navy instructions that address equal opportunity for military personnel are SECNAVINST 5350.16A, Equal Opportunity (EO) Within the Department of the Navy (DON), 18 December 2006, and OPNAV Instruction 5354.1F, Navy Equal Opportunity Policy, 20 September 2011. Both instructions expressly prohibit "unlawful discrimination" based on race, but neither instruction directly mentions Title VII of the Civil Rights Act or a similar statute that addresses racial discrimination. We have stated in the past, however, that Navy applies Title VII case law to determine whether the conduct in any given situation constitutes unlawful discrimination under these two instructions.<sup>18</sup>

125. Paragraph 5 of the SECNAV instruction states:

Discussion. Sailors and Marines are our most precious resource. In order to ensure mission readiness, we must overcome any prejudicial bias or stereotypes that impede our cohesiveness, camaraderie, or morale. Such behavior is contrary to DON Core Values of Honor, Courage, and Commitment and shall not be tolerated.<sup>19</sup> Unlawful discrimination undermines and diminishes a unit's ability to function in an effective manner. Discrimination destroys members' confidence and trust in their service and erodes a unit's cohesion and combat readiness. Every member of the DON must be afforded an equal opportunity to become a productive, contributing member of the Navy/Marine Corps team.

126. Paragraph 7, Responsibilities, of the OPNAV instruction contains two pertinent provisions:

k. Commanders ... shall:

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<sup>18</sup> At our request, the Offices of the General Counsel and Judge Advocate General confirmed this remains the current Navy position and agreed that the facts presented in this case do not amount to discrimination or create a hostile working environment under Title VII case law.

<sup>19</sup> Emphasis added.

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(1) promote a positive command climate through personal example.

n. Individual service members shall:

(1) treat others with dignity and respect.

(2) promote a positive command climate within the Navy through personal example.

### Analysis - Allegation #3

127. Subject's original 5 October 2012 email included a photograph that was, at best, crude and inappropriate. His second email in which he proposed a photo contest and offered a caption, "It's twoo, it's twoo," crossed a line because it perpetuated an offensive racial stereotype. Subject admitted it was an off-color joke, sexual in nature, and about "race."

128. We have already determined that Subject's overall conduct, inclusive of this allegation, did not adhere to the Exemplary Conduct regulation. We now conclude that the language in Subject's emails described a racial stereotype pertaining to the anatomy of black males and, when coupled with his reference to the scene in Blazing Saddles, a racial stereotype pertaining to the sexual prowess and proclivities of black males. Consequently, because of the language in paragraph 5 of the SECNAV instruction, we find the Subject's actions were contrary to Navy's Core Values.

129. We also conclude Subject's conduct violated paragraphs 7k and 7n of the OPNAV instruction, which require Commanders to "promote a positive command climate through personal example" and all service members to "treat others with dignity and respect."

130. We do not conclude, however, that Title VII case law supports a finding that Subject's conduct was discriminatory or created a hostile work environment based on race. Those cases establish a "totality of the circumstances" threshold that must be crossed before making either finding. Subject's remarks, made to a limited audience that did not include the Sailor in the photo, do not rise to the level of a personnel or similar action that affected that Sailor. While Subject's comments no doubt made those officers who received the email uncomfortable,

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none of them told Subject they found his comments offensive. Nor did Subject repeat those comments over the course of time. Consequently, on these facts, we do not find Subject's comments created a hostile working environment based on race.

### Conclusion - Allegation #3

131. The allegation is substantiated.

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**Allegation #4:** That Subject spoke in a manner which tended to diminish confidence in or respect due to ADM (b)(6) & (7)(c) [REDACTED] USN; VADM (b)(6) & (7)(c) [REDACTED], USN; and RADM (b)(6) & (7)(c) [REDACTED] USN; in violation of NAVREGS, Article 1133, Language Reflecting on a Superior.

### Applicable Standard - Allegation #4

132. U.S. NAVY REGULATIONS, Chapter 11, Article 1133 - Language Reflecting on a Superior:

...

No person in the naval service shall use language which may tend to diminish the confidence in or respect due to his or her superior officer.

### Analysis - Allegation #4

133. Language that diminishes the confidence in or respect due a superior officer might include statements that a reasonable person would find contemptuous or words that would challenge the integrity or professional competence of the senior being discussed.

134. Complainant alleged that on two occasions Subject made statements to him that African-American Flag Officers were selected based not on merit, but on race. He further alleged that Subject made comments specifically disparaging ADM (b)(6) & (7)(c) [REDACTED], VADM (b)(6) & (7)(c) [REDACTED], and RADM (b)(6) & (7)(c) [REDACTED]. The alleged comments are that they had been "assigned to their current positions and rank strictly because of their ethnicity, thus political." We conclude that if made, such statements do challenge the

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confidence in or respect due the Admirals being discussed and would therefore violate NAVREGS 1133.

135. FOIA EX (b)(6) & (b)(7)(c) testimony corroborates key portions of Complainant's allegations. FOIA EX (b)(6) & (b)(7)(c) corroborated that Subject discussed VADM (b)(6) & (7)(c) and RADM (b)(6) & (7)(c) at the dinner in Phuket. Further, he testified that Subject discussed that VADM (b)(6) & (7)(c) and RADM (b)(6) & (7)(c) had been aided by their minority status. FOIA EX (b)(6) & (b)(7)(c) stated that Subject's comments were about race and that he considered those remarks "slightly borderline" and that hearing Subject's statements about VADM (b)(6) & (7)(c) and RADM (b)(6) & (7)(c) made him uncomfortable. He stated that after Subject departed, Complainant told him that he believed Subject's comments were inaccurate and that he did not agree with the comments.

136. Subject testified and subsequently wrote in his 19 November 2012, statement that he made comments regarding the article about VADM (b)(6) & (7)(c). He also stated that he discussed the article about VADM (b)(6) & (7)(c) aboard STENNIS sometime in September or October 2012. He further stated that his comments were not race related.

137. FOIA EX (b)(6) & (b)(7)(c) testimony also corroborated portions of Complainant's allegations. While FOIA EX (b)(6) & (b)(7)(c) was not a witness of any conversation between Subject and Complainant, FOIA EX (b)(6) & (b)(7)(c) establishes that in September 2012, Subject did discuss his perception that minority officers were given a "leg up based on sex and race." FOIA EX (b)(6) & (b)(7)(c) also testified that Subject told him that there would probably be "a diversity select on the [upcoming] Surface [Flag Officer selection] board."

138. We noted that Subject testified less than 60 days after the September 2012 conversation FOIA EX (b)(6) & (b)(7)(c) reported. Subject did not recall the conversation he had with FOIA EX (b)(6) & (b)(7)(c). In his testimony, Subject denied discussing Flag Officer selection board precepts with FOIA EX (b)(6) & (b)(7)(c). Subject also denied that he specifically talked with FOIA EX (b)(6) & (b)(7)(c) about how selection board precepts might impact the selection opportunity for Strike Group Major Commanders.

139. We considered the motivations and potential biases that FOIA EX (b)(6) & (b)(7)(c) and FOIA EX (b)(6) & (b)(7)(c) had for testifying the way that they did in assessing the weight to attribute to their testimony. We could not discern any reason for them to provide

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testimony that was other than truthful. Accordingly, the fact that their testimony generally corroborated Complainant's testimony more than Subject's led us to determine that Subject did make remarks to his subordinates that could diminish their confidence in or respect due to his superior officers on at least the two separate occasions as reported by FOIA EX (b)(6) & (b)(7)(c) and FOIA EX (b)(6) & (b)(7)(c). We further determined that the private conversation between the Complainant and Subject at the Warfare Commander's social in July 2012 did take place. Having determined the Subject's propensity to discuss minority officer opportunity with subordinates as established by a preponderance of the evidence, we also determined that the Subject made comments to the Complainant at the social that were inappropriate or otherwise challenged the integrity or professional competence ADM (b)(6) & (7)(c) VADM (b)(6) & (7)(c), and RADM (b)(6) & (7)(c)

140. Having already determined that Subject's overall conduct, inclusive of this allegation, did not adhere to the Exemplary Conduct regulation, we now conclude that some of the Subject's comments, made to his subordinates, diminished the confidence in or respect due the superior officers about whom he spoke in violation of NAVREGS, Chapter 11, Article 1133 - Language Reflecting on a Superior.

#### Conclusion - Allegation #4

141. The allegation is substantiated.

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#### Other Matters

142. Complainant stated that Subject wanted to "... reduce the number of fire breaks and key turns as well as to further develop semi-automatic and automatic tactics beyond normal CVN fleet standards." Accordingly, we questioned Strike Group Warfare Commanders and other senior leaders aboard STENNIS about Subject's interest in this area. We determined that Subject's actions to explore weapon system settings and capabilities were appropriate and within his prerogative as Strike Group Commander.

143. FOIA EX (b)(6) & (b)(7)(c), FOIA EX (b)(6) & (b)(7)(c), and FOIA EX (b)(6) & (b)(7)(c) testified that they understood that Subject's interest was simply a desire to better understand the combat system capabilities and limitations of the platforms which comprised the Strike Group. We also determined

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that Subject's interest in the combat systems capability of Strike Group assets was consistent with current Commander, FIFTH Fleet (C5F) guidance on the application of force. Specifically, CF5 requires each Commanding Officer "to be the unquestioned master in the employment of his combat system and fighting the ship."<sup>20</sup> We conclude, therefore, that it was reasonable for Subject to make inquiries about "fire breaks and key turns," etc., in a effort to become more knowledgeable about the various combat systems under his command.

144. Regarding the Complainant's additional concern that Subject might "not consult higher headquarters before determining when to employ these new tactics [once they had been developed]", we found no evidence Subject intended to act in a manner contrary to Fleet Commander direction.

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<sup>20</sup> Commander FIFTH Fleet guidance on the use of force is promulgated by record message traffic to all Strike Groups. Current guidance is contained in COMUSNAVCENT 040737Z JUN 12.

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