

NAVAL INSPECTOR GENERAL

REPORT OF INVESTIGATION

Subj: SENIOR OFFICIAL CASE 201801726: MISCONDUCT BY RADM
JEFFREY A. HARLEY (RETIRED), FORMER PRESIDENT, NAVAL
WAR COLLEGE (NWC).



(b) (6), (b) (7)(C)

R. P. Snyder
VADM, USN

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**REPORT OF INVESTIGATION
RADM Jeffrey A. Harley
31 January 2020**

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I. INTRODUCTION AND SUMMARY

1. We initiated this investigation after receiving an anonymous complaint on April 22, 2018, that specified multiple allegations of misconduct by RADM Jeffrey A. Harley, while serving as President, NWC, (PNWC) June 2016 to June 2019. Between June 2018 and July 2019, we subsequently received additional allegations from anonymous complainants, as well as new allegations from identified complainants. We identified 21 allegations of misconduct by RADM Harley and investigated 19 of them. The anonymous complainant did not respond to our request for additional, clarifying information regarding their allegations against RADM Harley. During the course of our investigation, we identified emergent allegations that were also included for investigation. Two of the allegations were determined to be under the purview of the Assistant Secretary of the Navy, Manpower and Reserve Affairs (ASN/M&RA) and Assistant Secretary of the Navy, Financial Management and Comptroller (ASN/FM&C), respectively. Set forth below are the allegations:

Allegation 1. Between 2016 and 2018, RADM Harley wrongfully served and consumed alcohol on the NWC campus without proper authorization, in violation of Office of the Chief of Naval Operations Instruction (OPNAVINST) 1700.16B, and OPNAVINST 5350.4D.

Allegation 2. (b) (6), (b) (7)(C) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]).

Allegation 3. In December 2017, RADM Harley improperly directed the use of government funds for a trip to Naples, Italy, by (b) (6), (b) (7)(C) [REDACTED], in violation of the JTR; paragraph 3 of OPNAVINST 5450.207D; and 5 Code of Federal Regulation (C.F.R) § 2635.101(b)(9) and 2635.704.

Allegation 4. (b) (6), (b) (7)(C) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation 5. (b) (6), (b) (7)(C) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Allegation 6. (b) (6), (b) (7)(C) [Redacted]

Allegation 7. On March 5, 2018, RADM Harley improperly endorsed the NWCF and encouraged NWC students to become members of the NWCF, in violation of paragraphs 3-209 and 3-210 of Department of Defense Directive (DoDD) 5500.7R, Joint Ethics Regulations (JER).

Allegation 8. (b) (6), (b) (7)(C) [Redacted]

Allegation 9. (b) (6), (b) (7)(C) [Redacted]

Allegation 10. (b) (6), (b) (7)(C) [Redacted]

Allegation 11. (b) (6), (b) (7)(C) [Redacted]

Allegation 12. (b) (6), (b) (7)(C) [Redacted]

Allegation 13. (b) (6), (b) (7)(C) [Redacted]

2. During the course of our investigation, we discovered evidence indicating that in addition to the original allegations received, RADM Harley is alleged to have committed further misconduct in the performance of his duties as President, NWC. We drafted the following emerging allegations:

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Allegation 14: (b) (6), (b) (7)(C) [REDACTED]
[REDACTED]
[REDACTED].

Allegation 15: (b) (6), (b) (7)(C) [REDACTED]
[REDACTED]
[REDACTED].

Allegation 16: That RADM Harley improperly used his non-Government email for official Government business, in violation of Department of Defense Instruction (DoDI) 8550.01, DoDI 8170.01, and Deputy Secretary of Defense Memorandum, dated January 16, 2018.

3. In May 2019, we received an additional complaint indicating that RADM Harley is alleged to have committed further misconduct in the performance of his duties as President, NWC. We drafted the following allegation:

Allegation 17: (b) (6), (b) (7)(C) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

4. In June 2019, we received an additional complaint indicating that RADM Harley is alleged to have committed further misconduct in the performance of his duties as President, NWC. We drafted the following allegations:

Allegation 18: RADM Harley improperly allowed (b) (7)(C), (b) (6) [REDACTED] to remain in a national security position after (b) (7)(C), (b) (6) [REDACTED] was notified of the DoD Consolidated Adjudications Facility (DoDCAF) decision to deny or revoke his eligibility for access to classified information, and/or assignment to duties designated national security sensitive, and/or access to Sensitive Compartmented Information (SCI), in violation of 5 C.F.R. § 1400.201; DODI 5200.02; DODI 1402.06 and SECNAV M-5510.30.

Allegation 19: In August 2018, RADM Harley failed to report a potential compromise of classified information incorporated into an unclassified dissertation/blog posting by a Naval War College Professor in violation of DoD M5200.01, Vol, 3, SECNAVINST 5510.36A, and SECNAV M-5510.36.

5. In September 2019, we received an additional complaint indicating that RADM Harley was alleged to have committed further misconduct in the performance of his duties as President, NWC. We drafted the following allegation:

Allegation 20: (b) (6), (b) (7)(C) [REDACTED]
[REDACTED]
[REDACTED].

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6. During the course of our investigation, we discovered evidence indicating that in addition to the previous allegations, RADM Harley is alleged to have committed further misconduct in the performance of his duties as President, NWC. We drafted the following emerging allegation:

Allegation 21: Between December 2017 and April 2018, RADM Harley directed a subordinate to use official time to perform activities other than those required in the performance of official duties in violation of 5 C.F.R. § 2635.704 and 705.

7. As noted above, after reviewing the allegations involving management of the NWC budget by RADM Harley, we determined that referring Allegation 8 and Allegation 12 to ASN/M&RA and ASN/FM&C for review, respectively, was appropriate given the nature of those allegations.

8. Of the remaining nineteen (19) allegations, we substantiated seven. Twelve allegations were not substantiated.

a. Substantiated Allegations:

i. Allegation 1: We determined that RADM Harley wrongfully served and consumed alcoholic beverages on a naval installation without proper authorization. RADM Harley requested and received standing approval to serve alcoholic beverages onboard Naval Station Newport for events inside the immediate campus of the NWC; however, this approval authority was not delegated to him until eighteen months after he assumed his duties as President of the NWC (December 2017, took command in June 2016).

ii. Allegation 3: We determined that RADM Harley violated the JTR when he inappropriately approved (b) (7)(C), (b) (6) travel to Naples, IT, to provide a one-hour briefing to ADM Foggo in-person, as mission essential. As stated in the JTR, Authorizing Officials will approve travel that is “necessary to accomplish the Government’s mission effectively and economically”.

iii. Allegation 7: We determined that RADM Harley violated Section 3-209 of the JER when he sent the 5 March 2018 email communication to the NWC’s student body. His discussion in the email, which was sent from his government email account and included his rank, branch of service, and current title as the President of the NWC, praised the NWCF, a non-federal entity not listed as an endorsement exception in the JER. We further determined that RADM Harley also violated the JER Section 3-210 prohibition against official fundraising and membership when he sent the 5 March 2018 email communication to the NWC’s student body.

iv. Allegation 16: We determined that RADM Harley violated DoDI 8550.01 and DoDI 8170.01 when he used his personal email account to conduct official business in the absence of rare and extraordinary circumstances. In three instances, RADM Harley discussed official business after receiving email to his personal AOL account from the sender’s personal email account. RADM Harley stated that he used his personal email to conduct official business on approximately twelve different occasions.

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v. Allegation 18: We determined that RADM Harley violated Paragraph 3(b)(2) of Enclosure 3 of DoDI 5200.02, DoD Personnel Security Program (PSP), when he allowed (b) (7)(C), (b) (6) to remain in a national security position after DoD CAF rendered an unfavorable personnel security determination for (b) (7)(C), (b) (6). The DoD CAF revocation was further upheld by the Department of the Navy Personnel Security Appeals Board (DON PSAB) following submission of (b) (6), (b) (7)(C) appeal.

vi. Allegation 19: We determined that RADM Harley did not comply with reporting mandates specified in SECNAV M-5510.36, Information Security Program (ISP), when the Preliminary Investigating Officer (PIO) identified significant command security weaknesses and vulnerability in the NWC ISP. We determined that proper reporting to the CNO, Original Classification Authority (OCA), and NCIS did not occur when the Preliminary Inquiry (PI) exceeded the 72-hour limit for completion after PI initiation, as mandated by SECNAV M-5510.36. We determined that RADM Harley did not comply with additional SECNAV M-5510.36 reporting mandates when the NWC did not notify USSTRATCOM of this incident.

vii. Allegation 21: We determined that RADM Harley violated 5 C.F.R. § 2635.704 and § 2635.705 when, on two separate occasions, he directed NWC staff members to use official time to print out documents associated with RADM Harley's PhD program. Further, this resulted in RADM Harley's subordinate consuming government resources, in this case office supplies, for other than authorized purposes.

b. Allegations not substantiated: 2, 4, 5, 6, 9, 10, 11, 13, 14, 15, 17, and 20.

9. On December 23, 2019, we provided RADM Harley our Tentative Conclusions Letter (TCL) with the preliminary Report of Investigation (PROI) and gave RADM Harley the opportunity to comment on the results of our investigation before finalizing the report. In the PROI, we identified seven allegations that we tentatively substantiated. On January 2, 2020, we received RADM Harley's response to the TCL wherein RADM Harley reaffirmed his contention that none of the seven allegations should be substantiated. RADM Harley stated that during his tenure as PNWC, he believed he acted appropriately and honorably, and within the bounds of his authorities. RADM Harley further reiterated that he always sought legal reviews for his actions when appropriate. RADM Harley further stated that the decisions he made and actions he took as PNWC were not for his own personal gain or his desire to commit fraud, waste, or abuse.¹

10. This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

11. RADM Harley is a career surface warfare officer whose formative sea duty assignments include tours on frigates, destroyers and cruisers culminating in command of USS Milius (DDG

¹ RADM Harley's TCL response is included as exhibit 138 at the end of this final report. Each of RADM Harley's responses to the substantiated allegations set forth in tentative conclusions letter are addressed in detail in part V of this ROI.

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69) and commander of Destroyer Squadron (DESRON) 9. During these operational tours, RADM Harley completed seven deployments to the Western Pacific/Indian Ocean, Mediterranean Sea and Arabian Gulf. While commanding Milius, the ship participated in combat operations supporting Operation Iraqi Freedom and his crew won the Battle Efficiency Award and the Marjorie Sterrett Battleship Fund Award for overall combat readiness.

12. Ashore, RADM Harley served as fleet scheduler for the commander in chief, U.S. Pacific Fleet; executive assistant to the director for Operational Plans and Joint Force Development (J-7) on the Joint Staff; Asia-Pacific branch head in Deep Blue (N3/N5); director for Strategic Actions (N00Z) for the chief of naval operations; and as the 20th director, White House Situation Room.

13. As a flag officer, RADM Harley served as vice director, Strategy, Plans and Policy (J5) at U.S. Central Command; commander Amphibious Force 7th Fleet/ Expeditionary Strike Group 7/ Task Force 76; president of the Board of Inspection and Survey; and most recently, as assistant deputy chief of naval operations (Operations, Plans, and Strategy) (N3/N5B).

14. In June 2016, RADM Harley was appointed as President, U.S. NWC, Newport, Rhode Island. The NWC is responsible for educating and developing leaders, defining the future Navy, supporting combat readiness and strengthening global maritime readiness.

III. SCOPE

15. We interviewed RADM Harley and conducted 47 witness interviews. The witnesses included DON civilian and active duty military members, and non-Government civilians.

IV. FINDINGS AND ANALYSIS

Allegation 1: RADM Harley wrongfully permitted alcohol to be served and consumed on the Naval War College campus without proper authorization.

A. Facts:

(1) RADM Harley assumed command as President, NWC, (PNWC) in June 2016.

(2) Between August 19, 2016, and December 15, 2017, the College requested and received approval from the Commanding Officer (CO), Naval Station Newport (NSNPT), Rhode Island, on twenty-one different occasions to serve alcohol for various functions and social events, at various locations on the NWC Campus. None of these requests identified the office of the PNWC as the location where the alcohol would be served and consumed. (Ex 1)

(3) On November 13, 2017, RADM Harley requested Delegation of Authority to Authorize Serving of Alcohol at U.S. Naval War College, from the CO, NSNPT. The delegation of authority request specified the serving of alcohol in “*areas designated for command entertainment or organized social functions on an occasional basis.*” (Ex 2)

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(4) On December 27, 2017, RADM Harley received standing approval from the CO, NSNPT, to serve alcohol at NWC events, in accordance with OPNAVINST 1700.16B. The approval required RADM Harley to refer events that fell outside of the parameters specified in the delegation letter, to the NSNPT Staff Judge Advocate (SJA) for the NSNPT CO's determination. (Ex 3)

(5) On August 22, 2019, (b) (7)(C), (b) (6), former NWC staff member (retired), was interviewed regarding this matter. (b) (7)(C), (b) (6) described one instance when RADM Harley invited them into his office for a drink.

- (b) (7)(C), (b) (6) stated, on one occasion that occurred within six (6) months of RADM Harley's arrival at the College [June 2016]. (b) (7)(C), (b) (6) stated (b) (7)(C), (b) (6) was walking down a passageway near the President's [RADM Harley's] office, and RADM Harley was coming in the opposite direction. According to (b) (7)(C), (b) (6) RADM Harley signaled to (b) (7)(C), (b) (6) to follow him into his office, walking through the Front Office complex and in to RADM Harley's office. (b) (7)(C), (b) (6) noted that the Chief of Staff and Flag Aide were not in the Front Office, and there was no one in proximity to the office. (b) (7)(C), (b) (6) stated (b) (7)(C), (b) (6) went as far as the doorway of [RADM Harley's] office, and RADM Harley continued in, then turned around and said: "Come on in; would you like a drink?" RADM Harley motioned to the conference table where (b) (7)(C), (b) (6) observed a 'complete setup' of bottled liquor and not just beers and wine. (b) (7)(C), (b) (6) stated (b) (7)(C), (b) (6) was 'quite surprised' as (b) (7)(C), (b) (6) had worked at the College for many years and had never been offered a drink at work, and not from the President [NWC]. (b) (7)(C), (b) (6) stated (b) (7)(C), (b) (6) declined RADM Harley's offer for a drink, to which RADM Harley stated: "I just want people to be happy about working here." (Ex 4:5-7)

- (b) (7)(C), (b) (6) testified that RADM Harley then took a red Solo cup from a stack of cups, put ice in the cup and poured himself a drink; (b) (7)(C), (b) (6) could not be certain what RADM Harley poured into his cup and RADM Harley did not say what he poured. (Ex 4:7)

- (b) (7)(C), (b) (6) said this occurred in the afternoon time, around 1p.m.; (b) (7)(C), (b) (6) estimated the event lasted no more than four (4) minutes. According to (b) (7)(C), (b) (6) no one else observed this event in RADM Harley's office. RADM Harley did not say or explain why the liquor setup was on the table. (b) (7)(C), (b) (6) stated (b) (7)(C), (b) (6) was not aware of any official event or social function occurring at the College when this occurred. (b) (7)(C), (b) (6) wondered if RADM Harley was testing (b) (7)(C), (b) (6) regarding having a drink during work hours. (Ex 4:10)

- (b) (7)(C), (b) (6) stated (b) (7)(C), (b) (6) had been in RADM Harley's office on several occasions previously and never saw evidence of liquor or drinking before. (Ex 4:10)

- (b) (7)(C), (b) (6) further testified that on multiple occasions RADM Harley invited anyone [NWC faculty and staff] to his house to have a beer; (b) (7)(C), (b) (6) assumed that the offer was intended for after duty hours because RADM Harley would not be at home during normal work hours. (Ex 4:17)

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- (b) (7)(C), (b) (6) testified that because (b) (6) was uncomfortable with the incident with RADM Harley, (b) (6) subsequently reported it to (b) (7)(C), (b) (6), within three days of the incident. (b) (7)(C), (b) (6) reported to (b) (7)(C), (b) (6) what had taken place in RADM Harley's office, and related (b) (6) concern regarding someone more junior, especially a young woman being called into RADM Harley's office. (b) (7)(C), (b) (6) believed that it was not apparent to RADM Harley that there were no staff members outside his office [when the incident with (b) (7)(C), (b) (6) occurred]. (b) (7)(C), (b) (6) related (b) (6) did not want to see 'anyone get into trouble for doing something foolish.' (Ex 4:20)

- According to (b) (7)(C), (b) (6) when (b) (6) told (b) (7)(C), (b) (6) about the incident, (b) (7)(C), (b) (6) smiled an uncomfortable smile and explained that:

He [RADM Harley] thinks of you as his inner circle. He does this quite often and he will have people in to have a drink. You (b) (7)(C), (b) (6) should be flattered, because he [RADM Harley] considers you part of that core group. It's his leadership style, as unusual as it might be, it's his leadership style. (Ex: 4:21)

(6) On September 24, 2018, (b) (7)(C), (b) (6) was interviewed regarding their observations of alcohol being consumed by RADM Harley in the duty section. (b) (7)(C), (b) (6) stated:

I have. On occasion. Typically, maybe on a Friday afternoon, he will invite folks in at his – I would say certainly more rare. It's not a common occurrence, but he has always been one to say, hey, if – this is—you can have it on special occasions or rare occasions. (Ex 5:3)

And he's big on team building and will have some folks come and say, hey, you know, relax and make sure that everybody is good to go. And he says – his statement was, I'd rather do it early in the afternoon so nobody has to like, have a drink and go home, if they choose to have something. (Ex 5:3-4)

- When asked how early in the afternoon (b) (7)(C), (b) (6) stated "Usually 1400 hours or so. Typically it would be at maybe the end of a very big week. (Ex 5:4)

- (b) (7)(C), (b) (6) further testified that starting from July 2016, their earliest recollection of alcohol being served and consumed in the duty [section] was "...probably within maybe the first month" [of (b) (7)(C), (b) (6) arrival at the College]. (Ex 5:5)

- (b) (7)(C), (b) (6) characterized the frequency of these events as *occasional* and further estimated they have occurred "maybe six to ten times in the last two years. [2017-2018]" (Ex 5:5)

- (b) (7)(C), (b) (6) described one example of this occurring after an NWC Regional Alumni Symposium in Peru, stating:

And so I think it was like a week or two after that, he [RADM Harley] invited a lot of the staff that had helped support that up and made pisco sours, which apparently is like, a big Peruvian

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drink. So he says, hey, come on up, we'll have pisco sours. And that was meant to be a thanks for all your work, and kind of a tribute to the time spent on it. (Ex 5:6)

- (b) (7)(C), (b) (6) further opined, stating:

And I think this is also part of the Admiral wanting to kind of craft a relaxed atmosphere to kind of highlight communications and the fact that – although a two-star here – he's the only flag on base, that he kind of wants to lower the barriers of people approaching him. (Ex 5:10-11)

So I think this is kind of part of [his] persona of being your kind of everyday man that you come to talk to. (Ex 5:11)

- (b) (7)(C), (b) (6) was asked if (b) (6), (b) (6) was aware of NWC members feeling pressured to join RADM Harley for a beer, and (b) (7)(C), (b) (6) related that (b) (7)(C), (b) (6) reported being offered a margarita “by the boss” [RADM Harley] and (b) (7)(C), (b) (6) asked if this was “some kind of test.” (Ex 5:11-12)

- (b) (7)(C), (b) (6) stated RADM Harley had a margarita machine³ in his office when this occurred and the machine was used in either RADM Harley's office or in the flag mess; (b) (7)(C), (b) (6) believed the machine was used three times possibly in 2018. (Ex 5:13-14)

- (b) (7)(C), (b) (6) described RADM Harley as communal, stating: “So when he does this, and there are people floating around, he's like, hey, come in and have a drink. (Ex 5:16). (b) (7)(C), (b) (6) further added:

No, he is not soliciting people in the P-way [passageway] and then cranking stuff up to make them a drink. It is –he has said, ‘hey, at this time, we'll do this.’ Just as a – you know, good deal, relax. (Ex 5:16)

So it's the – just the standard of, I [RADM Harley] want to create a relaxed atmosphere here. (Ex 5:17)

And so if he does it, then he's like, hey, come down here. And so probably more people on the second deck here would be privy to that. And in this case, (b) (7)(C), (b) (6) worked in [another office not on the second deck] – but was walking by. (Ex 5:17)

(7) On September 24, 2018, (b) (7)(C), (b) (6)

, was interviewed regarding this matter and stated:

Yes, I have observed him [RADM Harley] drinking in and around the office, walking the corridors with a beer in his hand, and inviting people into his office for a drink. (Ex: 6:4)

- When asked about RADM Harley having and using a margarita machine, (b) (7)(C) stated:

³ During his interview on September 30, 2018, RADM Harley clarified that the margarita machine was a blender. (Ex 12:313)

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Yes, I am aware that he [RADM Harley] has done that. He has the margarita machine that's sometimes in his office, sometimes not, that he has invited people in for that.
(Ex 6:4)

- (b) (7)(C), (b) (6) clarified he did not observe instances when drinks were made in the margarita machine. (Ex 6:5)

- When asked if he were aware or heard about 'beer afternoons', (b) (7)(C), (b) (6) stated:

No, not really. I mean, I've observed him on afternoons with a beer in his hand, in the corridor, or in and around the office. (Ex: 6:7)

- (b) (7)(C), (b) (6) further related an instance when RADM Harley invited two of (b) (7)(C), (b) (6) employees, (b) (7)(C), (b) (6) and (b) (7)(C), (b) (6), in for a drink. According to (b) (7)(C), (b) (6) (b) (7)(C), (b) (6) stated 'they were uncomfortable with that and did not want to go, and made an excuse [to leave]'. (Ex 6:7-8)

- (b) (7)(C), (b) (6) stated (b) (7)(C), (b) (6) was invited in with others [NWC members] for [a drink from] the margarita machine and (b) (7)(C), (b) (6) was uncomfortable and 'didn't want to do it.' (Ex: 6:8)

- On October 9, 2018, (b) (7)(C), (b) (6) was interviewed and detailed an event that took place a couple of weeks after the March 2017 NWC Regional Alumni Symposium, in Peru, when (b) (7)(C), (b) (6) and their subordinate were called to RADM Harley's office:

When we got there, everyone in the Front Office was in the Admiral's office, kind of gathered around his conference table. And, you know, they – we –and I kind of poked my head in. I'm like, 'Sir, you wanted to see us.' And he said, 'Oh, come in. Come in. Come in.' As we walked in, [we] were both handed a pisco sour in a plastic cup. We were both handed –and there is a margarita machine. And they are like: 'Pisco sours. It's a reunion of the people from Peru.'
(Ex 7:11-12)

- (b) (7)(C), (b) (6) further testified that: "It was definitely before three. It was, you know, early afternoon on a Friday." (Ex 7:12)

(8) On September 25, 2018, (b) (7)(C), (b) (6), was interviewed regarding alcohol in the work place at the NWC, and stated:

The Admiral [RADM Harley] does drink on duty upon occasion. I have seen him personally wander the halls with a beer in his hand, sometimes early to mid-afternoon. On other occasions, he has – I can think back as early as two years ago, and this is the only time that I have actually joined him as part of a large group. I forget the exact event, but it involved a lot of –what was then the College of Operations and Strategic Leadership. And I can't remember if there was a big win for the college. There were a number of people in his office, and he had a margarita machine out and was making margaritas and passing them out. That was fairly early in his tenure [2016]. I can't remember if it was late summer, early fall of 2016. (Ex 8:4)

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I mean, but over time the – the references to alcohol, the wandering the passageways with the beer, offering other people beer—at least a couple of occasions, I’ve been down talking to him, and he said, ‘hey, do you want a beer?’ (Ex 8:5)

He has come to my office on at least one occasion with a beer in his hand, after some event with the enlisted. I don’t know if a frocking. I don’t know if it was a PNWC call with them. But he came up into my office, sat down, and proceeded to talk about some aspect of the institution. But he had the beer in his hand, and it was still—you know, it was before 1600. (Ex 8:6)

(9) On September 24, 2018, (b) (7)(C), (b) (6) was interviewed regarding this matter and testified he never saw RADM Harley drink [alcoholic beverages]. (Ex 9:6-7)

(10) On September 24, 2018, (b) (7)(C), (b) (6) was interviewed regarding RADM Harley drinking alcohol in the work center, to which (b) (7)(C), (b) (6) testified:

I can speak to two – two issues, personal issues, that I can speak to with regard to this. And I say the first one was around the Holidays 2017. And he [RADM Harley] was –he was walking in the hallway and he had a beer. And it was his beer, because Yuengling, so a Yuengling beer. The reason why I remember this is eventually, there was a bottle, an empty bottle of Yuengling beer, left in my office when I wasn’t there. So I just found that to be odd. He [RADM Harley] made a statement that he was in my office, I guess to stop in to see me or something along those lines. (Ex 10:3-4)

- (b) (7)(C), (b) (6) further described the second issue:

The second time though was more recent. It was probably I want to say three or four weeks ago, and I was looking for him [RADM Harley] to discuss an issue with regard to the foundation⁴. He happened to be in C210 [NWC], which is the large conference space across from the president’s office suite. It’s a round table in there and we do a lot of cake cutting and things like that there. And there—you know, the Admiral was in there with a small group of folks, I’d say probably 10, mostly his Front Office support staff. And they had frozen drinks. So when I walked in there, he [RADM Harley] poured a little one for me and I was taking a sip, he was saying, don’t go driving for a couple hours, which surprised me. I expected it to be like a cold – you know, virgin margarita or something like that. So yeah, he was pouring. And I don’t know what the alcohol was in it. But I did ask him, I said, ‘So there was alcohol in here?’ And he said, ‘yeah.’ (Ex 10:4-5)

- (b) (7)(C), (b) (6) further stated: “But it seemed to me it was an impromptu kind of thing. It wasn’t intended to be a long engagement.” (Ex 10:6)

- (b) (7)(C), (b) (6) concluded by stating: “I was not familiar—I’m not familiar with, prior to this—this is the four week ago incident, other than that one beer issue, I’m not familiar and didn’t have any sense that there was an alcohol issue.” (Ex 10:8)

⁴ Naval War College Foundation

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(11) On June 19, 2018, (b) (7)(C), (b) (6) was interviewed regarding RADM Harley and drinking on duty, and testified:

There were two instances where he [RADM Harley] had the entire staff in to have – he offered a margarita each to every staff member from the margarita machine. One instance was in his office. The occasion was a birthday, and a cake had been prepared. And the other instance was in the flag mess. I believe that was during the New Year season, and I think the New Year, or the New Year holiday was the occasion. (Ex 11:3-4)

On every occasion – on both those occasions, there was a tray of non-alcoholic sparkling water. I didn't perceive any pressure at all to take a margarita or to participate in anything at all, but the cake, perhaps. (Ex 11:4)

There was one apiece. He [RADM Harley] made a point on both occasions that he had obtained the proper permission for this one-time infrequent event from the Station Commander, according to the Station Commander's order and the OPNAV instruction, I believe it is. (Ex 11:4)

- (b) (7)(C), (b) (6) further testified that he was in RADM Harley's office frequently and did not recall seeing a margarita machine in RADM Harley's office. (Ex 11:6) (b) (7)(C), (b) (6) further stated he had never seen RADM Harley drinking beer in the office spaces, and had "never heard about a beer afternoon." (Ex 11:7)

- (b) (7)(C), (b) (6) concluded his testimony by stating he saw RADM Harley every day and had never seen RADM Harley drink to excess, never seen any indication of intoxication by RADM Harley, and only saw him drink on the two instances described. (Ex 11:7-8)

(12) On September 30, 2019, RADM Harley was interviewed regarding permitting alcohol to be served and consumed at the NWC. Exhibit 1 was presented to RADM Harley for his review, which detailed the twenty-one instances in which the NWC requested and received approval from the Installation Commander to serve alcohol.

- RADM Harley was informed that witnesses interviewed detailed instances between June 2016 and December 2017, when he was in possession of alcoholic beverages, offering alcoholic beverages to NWC members during the duty day, and consuming alcoholic beverages during the duty day. It was clarified to RADM Harley that none of the instances detailed by witnesses was associated with the twenty-one approved instances, and therefore did not receive Installation Commander approval. RADM Harley responded by stating:

Yeah. So to me, there's two kinds of events here, right. There's formal designated events, like, hey, there's a retirement ceremony at 2 p.m. on Friday, probably have a form associated with it, and -- and if I'm attending the event and if I have no other meetings that day, yes, I would participate in the consumption of alcohol at one of these formal designated events.

Now informal events where I'm the approval authority or certainly thought I would be being a two star Admiral on a -- he's a great man, on bases with (b) (6), (b) (7)(C) of the Naval Station, I assumed I already had the authority, but when I learned I didn't, I went ahead and asked for it to make sure it was clear that I had it, but we do have informal events about every six-seven-eight months.

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Usually the front office staff where we would either go to the Officers' Club or there was one or we could choose to have beers or this is the world-famous margarita discussion or we could have margaritas once every seven or eight months on my authority as the commander at an informal event, still meeting the requirements of food requirements and other, you know, non-alcoholic beverages. (Ex 12:283-284)

- RADM Harley clarified when he realized that he did not have the authority, stating:

So probably what led to me discovering I didn't have this authority was probably a discussion with (b) (7)(C), (b) (6) So it was probably in that discussion I said, 'hey, I probably ought to get this in writing because otherwise I'm assuming I have this authority,' and so for these informal events once every eight months, I assumed that I had that authority. I still do. (Ex 12:284-285)

- RADM Harley believed he had the authority because he was the senior flag officer on the installation and did not work for the Navy Installation.⁵ (Ex 12:285)

- RADM Harley stated that he was not aware that the NWC staff had submitted the previous requests (Ex 1) for permission to the Installation Commander, further stating that the staff was following a procedure they did not need to follow. (Ex 12:286)

- When asked why he requested the Installation Commander delegate approval authority to him if he believed he already had the authority, RADM Harley stated he was trying to do the right thing and have the delegated authority formalized. (Ex 12:289-290)

- RADM Harley was provided details related to (b) (7)(C), (b) (6) testimony (Ex 4) and that he offered (b) (7)(C), (b) (6) a drink at 1p.m. on a duty day. RADM Harley did not recall this event, but stated:

Because I got to tell you when we do camaraderie events, my preference, if the working day is over, is to do it in the early afternoon. That way, the alcohol can be worn off before I let them drink -- before I let them drive, but again never if there's additional work that's required. And always in compliance with the SECNAV Instruction which is where I thought I had the authority. (Ex 12:292)

- RADM Harley stated that he had the authority to authorize the consumption of margaritas and using a margarita machine during an event in his office in fall 2016.⁶ (Ex 12:294)

- RADM Harley stated that he did not have any exchanges directly with (b) (7)(C), (b) (6) regarding the level of authority RADM Harley had on the installation to serve and consume alcohol. (Ex 12:296-297)

⁵ Chief of Naval Operations Instruction (OVNAVINST) 1700.16B, Alcoholic Beverage Control, specifies that Commanding Officers of Navy installations shall have approval authority for activities under their cognizance.

⁶ Standing Approval to Serve Alcohol at NWC; Exhibit 3.

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- RADM Harley said that he never received any objections from the NWC General Counsel, SJA, or anyone else about alcohol use. (Ex 12:296)

- When asked about an instance in approximately March or April 2017, and after NWC members returned from Peru, when he was using the margarita machine to make pisco sours for staff members, RADM Harley stated:

So yes. So our gift provided at the Regional Alumni Symposium was -- they're always big drinkers in Peru was Pisco, which is a white-gray alcohol, like a rye something. So it's quite a formula to make a Pisco sour and created by Americans in Peru. So yes, I thought as a way to recognize the extraordinary achievements of the (b) (6), (b) (7)(C) that put on the Regional Alumni Symposium in Peru that if -- if they wanted to help consume some of the Pisco, this would be a product -- this would be an appropriate camaraderie-building event. If somebody felt uncomfortable, that's my fault as a leader. (Ex 12:297-298)

- RADM Harley was asked to comment on the delegated authority provided by (b) (7)(C), (b) (6) and the requirement to refer stipulated events outside of the aforementioned NSNPT SJA⁷. RADM Harley responded:

I would argue there's two kinds of events. There's formal events, like a retirement ceremony where you don't know the -- the attendants, and then there's informal events, camaraderie-building events with a small group of people, usually their immediate personal staff, and to me, those count as events. So when I read this, I go, yeah, I'm in -- I'm within this guideline. (Ex 12:300)

- RADM Harley believed he had the authority to define what events are. (Ex 12:302). RADM Harley stated he did not know if a legal review was conducted on the authorization he received from the Installation CO. (Ex 12:303)

- When asked if his authority to serve and consume alcohol included during duty hours, RADM Harley responded:

Well, if I was done with the additional meetings, it would be usually on a Friday afternoon, do it early so that people would have a chance to recover from any alcohol in their blood. So I would say Friday at 1300, knowing, you know, making it quite clear to the people who attended that, hey, this is to ensure that you don't drink and drive, but we're not having alcohol at 9 a.m. and, you know, I'm always on duty. So it's always part of a conscious decision as to when one does this. (Ex 12:311)

- RADM Harley concluded his verbal statement responding to the question if he had any conversation with the Installation CO regarding serving and consuming alcohol, stating:

⁷ The Standing Approval Letter RADM Harley received on December 27, 2017, states that 'events outside the aforementioned parameters must continue to be referred via the NSNPT Staff Judge Advocate's Office for NSNPT Commanding Officer's determination.' (Ex 3)

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I don't recall that conversation. It doesn't mean it didn't happen. That's not in a facetious kind of way, but, you know, for me, having done this many times, including in the Pentagon, this is just a normal authority for the most senior person at a command, not subject to a commanding officer of a naval station, a great individual with a high level of responsibility, but it would not be what I was accustomed to or what I thought was appropriate. (Ex 12:318)

(13) On October 4, 2019, RADM Harley submitted an Official Statement to this office, and offered his additional comments:

In accordance with those directives, any alcohol consumption was conducted on a rare and occasional basis and was in compliance with authorities granted to me as the NWC President. Much of the interview process focused on documentation showing that the college has frequently requested approval from the Base Commanding Officer as thus the authority resided with him and not myself as President of the College. I was unaware that the college was requesting permission from a command outside of my purview and believe that I ALWAYS had the authority to authorize alcohol consumption in accordance with OPNAVINST 5350.4D which notes, "Commanders, commanding officers, and OICs may authorize consumption of alcoholic beverages during normal working hours for official functions, ceremonies, and other infrequent command sponsored events."

This authority was never surrendered in spite of paperwork trails designed to maintain a cordial working relationship with the naval station. Once we realized that unnecessary paperwork was being generated, we had the base CO send a letter delegating approval authority to the college but I viewed that as appropriately identifying the relationship rather than acceding to any diminishment of my authorities while in command.

Additionally, a broad legal review of camaraderie-building events was indeed granted by [REDACTED] as well as subsequent Ethics Counselors. At times, alcohol consumption was approved at designated receptions or ceremonies. I never consumed alcohol or approved alcohol use for any other official events except for occasional team-building events (perhaps every few months) occurring at the officer's club, in our kitchen, in our conference room or in my office with the front office staff or travel team but these again only occurred on a rare and occasional basis per policy directives.⁸

In sum, I have the authority to authorize alcohol consumption at the college during working hours and would never surrender that authority to someone outside of my chain of command. The events were always within the guidelines and were subject to broad legal review. Although the Associated Press and individual stories would sensationalize these events into almost daily occurrences, the truth is they were rare and infrequent and in alignment with Navy policy directives. (Ex 13)

B. Standards:

⁸ On May 9, 2018, [REDACTED] provided a legal opinion to RADM Harley regarding authorized alcohol consumption at the NWC. [REDACTED] legal opinion was provided after the instances in which RADM Harley was questioned about during his interview on September 30, 2019. Further, [REDACTED] opinion did not address the mandate in OPNAVINST 1700.16B regarding Navy installation Commanding Officer approval authorities involving serving and consumption of alcohol for activities under their control. (Ex 14)

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(1) OPNAVINST 1700.16B, Alcoholic Beverage Control, states:

3. Policy. Use of alcoholic beverages on naval installations must be consistent with the overriding need for military readiness, discipline, and community safety. References (b) through (d) provide guidance for the purchase, possession, sale, service and consumption of alcoholic beverages within military installations under naval jurisdiction. In meeting this objective, the sale, purchase, possession, and consumption of alcoholic beverages shall be governed by the following considerations:

f. Except as specifically authorized in this instruction, the sale, purchase, possession, and consumption of alcoholic beverages is prohibited on any military installation, aircraft or vessel under naval jurisdiction.

Paragraph 6. Sale, Possession, and Consumption by the Drink. CNO or CNO designees may authorize:

a. Sale and consumption of all alcoholic beverages by the drink are authorized in the following locations on board naval installations. These activities may include (the below list is not all inclusive):

(10) Areas designated by installation commanders for command entertainment or organized social functions on an occasional basis

c. With respect to subparagraphs 6a and 6b, the following shall have approval authority for activities under their cognizance:

(8) Commanding officers (CO) of Navy installations.

(2) OPNAVINST 5350.4D, Navy Alcohol Drug Abuse Prevention and Control states: *The Navy does not condone consumption of alcoholic beverages during normal working hours. Commanders, Commanding officers, and OICs may authorize consumption of alcoholic beverages during normal working hours for official functions, ceremonies, and other infrequent command sponsored events.*

C. Discussion:

1. Based on a preponderance of the evidence, we determined that RADM Harley wrongfully served and consumed alcoholic beverages on a naval installation without proper authorization. While RADM Harley requested and received standing approval to serve alcoholic beverages onboard NAVSTA Newport for events inside the immediate campus of the NWC, this approval authority was not delegated to him until eighteen months after he assumed his duties as President of the NWC (December 2017, took command in June 2016). And RADM Harley admitted, corroborated by several witnesses, that he served and consumed alcohol inside the NWC headquarters building during normal working hours in the work week during this period between June 2016 and December 2017. Furthermore, none of these instances between June 2016 and December 2017, where RADM Harley served and consumed alcoholic beverages, were approved by the Installation Commanding Officer (CO) (the twenty-one instances that were

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properly routed and approved by RADM Harley's staff related to other events onboard the NWC).

2. RADM Harley's explanation that he believed, as the senior officer present onboard NAVSTA Newport, that he had the authority to serve and consume alcoholic beverages during normal working hours is not objectively reasonable. First, OPNAVINST 1700.16B, promulgated after OPNAVINST 5350.4D, clearly contemplates approval for the service and consumption of alcoholic beverages onboard Naval installations to reside with the Installation Commanding Officer. Second, prior to RADM Harley's request for delegation of authority (which referenced OPNAVINST 1700.16B), his own staff sent twenty-one requests to the Installation Commanding Officer for approval to serve and consume alcoholic beverages. Third, RADM Harley's belief is further contradicted by the fact that the delegation of approval from the Commanding Officer of NAVSTA Newport in December 2017 contained the following stipulation: "Events outside the aforementioned parameters [events inside the immediate campus of the NWC] must continue to be referred via the NSNPT SJA's Office for NSNPT Commanding Officer's determination." Thus, contrary to RADM Harley's stated position, the OPNAV instructions (and the base CO's delegation of approval authority) did not grant him authority to approve the service and consumption of alcoholic beverages at any time he deemed appropriate.

D. Conclusion: That RADM Harley violated OPNAVINST 1700.16B, Alcoholic Beverage Control, and OPNAVINST 5350.4D when he did not request permission from the Installation Commander to serve and consume alcohol at the NWC.

E. Recommendation: We recommend that the NWC SJA/Ethics Counsel or provide ethics training regarding alcohol use and consumption, and requirements specified in OPNAVINST 1700.16B to the PNWC on a routine basis. The NWC hosts a number of social and other events where alcohol is authorized for use and PNWC being cognizant of the review and approval process for alcohol use and consumption is important.

Allegation 2: (b) (7)(C), (b) (6)

A. Facts:

((b) (7)(C), (b) (6))
[Redacted text block]

⁹ For purposes of analyzing allegations 2, 3, 5, and 14 involving RADM Harley and (b) (7)(C), (b) (6), it is necessary to understand the varied roles (b) (7)(C), (b) (6) was serving in vis a vis his relationship with the Department of the Navy, which are each described in greater detail in the allegations involving (b) (7)(C), (b) (6)

(b) (6), (b) (7)(C)

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)

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(1) In December 2017, (b) (7)(C), (b) (6) traveled to Naples, Italy, to provide a briefing entitled: ‘A Strategic Pivot to the Black Sea’ to ADM James Foggo, Commander, U.S. Naval Forces Europe (NAVEUR).¹⁸ RADM Harley determined (b) (7)(C), (b) (6) trip to brief ADM Foggo was mission essential¹⁹ and the NWC subsequently funded (b) (7)(C), (b) (6) trip to Naples. (Ex 24) Prior to (b) (7)(C), (b) (6) trip to Naples, Italy, in December 2017, (b) (7)(C), (b) (6) had a series of discussions with ADM Foggo relating to developing strategy in the [Black Sea region]. (Ex 22:37)

(2) In preparation for (b) (7)(C), (b) (6) trip to Naples, on October 15, 2017, (b) (7)(C), (b) (6) sent an email inquiry (Ex 25) to RADM Harley regarding dates for (b) (7)(C), (b) (6) travel to brief ADM Foggo in Naples. RADM Harley subsequently responded:

(b) (7)(C), (b) (6) at airport or in archives all day. These dates are right. I have the planners working on the concept for Adm Foggo. I would be inclined to let you go to Hqs HQ on your own...i should be able to fund based on your distinguished faculty role...i just have to get the paperwork done asap. We will have to catch us by phone as I need to get to Dulles right after Advisors meeting...

I sincerely appreciated the mentoring prep session and the meeting with rmsi...all is well! (Ex 25)

- (b) (7)(C), (b) (6) responded: ‘(b) (7)(C), (b) (6)—I assume Hell’s HQ is the Pentagon and I agree I would not fund that. Let me know a good time to chat on Thursday—1230 to 1 or so work?’

- In a follow-on response to RADM Harley, (b) (7)(C), (b) (6) stated:

(b) (7)(C), (b) (6)--to make sure I understand, you would prefer I see Jamie [ADM Foggo] by myself with the brief? Either way is fine. However, is there some reason such as the chain of command that might be concerned if you were there as I think important for you to see the sub component commanders as well as the number fleets?

But I need to know what to say as I want to email Jamie before he takes over Oct 20

Best (b) (7)(C), (b) (6)

- RADM Harley sent a final email response stating:

(b) (7)(C), (b) (6)-no issues with Chain of Command...rather just limited in time. I will definitely go see ADM Foggo in new year but sooner is problematic. (Ex 25)

¹⁸ The development of the briefing was a collaborative effort between the NWC Russia Maritime Studies Institute (RMSI) and (b) (7)(C), (b) (6). (Ex 22:25)

¹⁹ Supporting Combat Readiness and supporting DON operational commanders is one of seven missions of the NWC. Source: <https://usnwc.edu/About/Mission>

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(3) On October 20, 2017, RADM Harley appointed (b) (7)(C), (b) (6) as a (b) (7)(C), (b) (6) .²⁰ This appointment authorized (b) (6), (b) (7)(C) to participate in organized College events such as workshops, conferences, etc., in an effort to present his research. The appointment also authorized (b) (7)(C), (b) (6) to undertake collaborative research activities with the Russia Maritime Studies Institute (RMSI), NWC. (Ex 26)

(4) On October 30, 2017, the NWC RMSI conducted a table-top exercise (TTX) designed to investigate a NATO pivot to Romania.²¹ This particular TTX was as a result of a discussion between RADM Harley and ADM Foggo regarding ADM Foggo's interest in the Black Sea region. The NWC would provide the results of the TTX to ADM Foggo (Ex 27)

(5) On November 29, 2017, a senior NWC faculty member detailed efforts to RADM Harley to request assistance from the NWCF²² to fund (b) (7)(C), (b) (6) travel to Naples, Italy. (Ex 28)

(6) On December 4, 2017, (b) (7)(C), (b) (6) contacted (b) (7)(C), (b) (6) , and requested clarification on a request by (b) (7)(C), (b) (6) to fund (b) (7)(C), (b) (6) travel to Naples, IT, to brief ADM Foggo. (Ex 29)

- (b) (7)(C), (b) (6) subsequently responded and stated:

(b) (7)(C), (b) (6) reached out to us about wanting to meet with Admiral Foggo as they are old acquaintances. We consented and made it a working lunch so he could discuss all things "Black sea" with us. As far as we are concerned, this was a friendly get together and nothing "on behalf" of ADM Foggo. We are not tracking any tasking either. (Ex 29)

- (b) (7)(C), (b) (6) responded on December 7, 2017, stating:

I just spoke with PNWC [RADM Harley] and he is tracking (b) (7)(C), (b) (6) coming to see ADM Foggo on the 15/16th of this month [Dec 17] to provide him a brief. This is apparently based on an email engagement between ADM Foggo and (b) (7)(C), (b) (6). If this is in fact the case, can you guys provide (b) (7)(C), (b) (6) invitational travel orders? PNWC is willing to mipr²³ the money to you if the funding is a concern. Let me know what you think and what's in the realm of the possible. My apologies as we try to piece this puzzle together...much of the discussion has occurred on private lines. (Ex 29)

²⁰ (b) (7)(C), (b) (6) was not commensurate with delegated authorities or responsibilities from RADM Harley. In his October 15, 2017 email communication to (b) (7)(C), (b) (6) RADM Harley specifies that the NWC should be able to pay for (b) (7)(C), (b) (6) trip to Naples because (b) (7)(C), (b) (6) would be in an NWC (b) (7)(C), (b) (6) e'. (Ex 25)

²¹ The NWC conducts table-top exercises as a part of the NWC's mission to support operational Commanders in the field. This particular TTX involved NATO and Romania and was of interest to the NAVEUR Commander, ADM Foggo. The results of the TTX were a part of the briefing (b) (7)(C), (b) (6) provided to ADM Foggo.

²² This request was in support of the NWCF providing financial support to many projects at the NWC for which public funds are not available. Source: NWCF website: <http://www.nwcfoundation.org/NWCF.asp>

²³ Military Interdepartmental Purchase Request (MIPR) is a method to transfer funds between military organizations.

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- (b) (7)(C), (b) (6) further responded and clarified that NAVEUR would write the invitational travel orders but that NWC would cover the costs associated with (b) (7)(C), (b) (6) trip.

- On December 8, 2017, RADM Harley sent an email to NWC faculty members inquiring about the funding for (b) (7)(C), (b) (6) trip to NAVEUR. (Ex 30) In response to RADM Harley's inquiry, (b) (7)(C), (b) (6) sent an email response to senior NWC faculty members and provided a legal analysis of (b) (7)(C), (b) (6) travel: (Ex 30)

Step #1 - Is the expenditure of O&MN to fund this travel a proper purpose for NWC O&MN (or perhaps RDT&E)? The answer depends on what (b) (7)(C), (b) (6) will do during the travel. Can we articulate how his activity contributes directly to the NWC missions, functions and tasks (or in the case of RDT&E, how it is necessary for basic and applied scientific research, development, test, and evaluation)?

Step #2 - Assuming that funding (b) (7)(C), (b) (6) activities is a proper purpose for the appropriation to be charged (O&MN or RDT&E), we can carry out that purpose through invitational travel orders, unless alternative means (e.g. secure teleconference) are sufficient to effect the purpose of the travel.

Analysis of Steps #1 and #2 require some details about what (b) (7)(C), (b) (6) will do on the travel. (Ex 30)

(7) On December 11, 2017, RADM Harley signed the NWC Mission Essential Travel Request (METR) for (b) (7)(C), (b) (6) trip to Naples. (Ex 24) Information on the METR specified the following:

- Travel Description: Meeting with ADM Foggo at NAVEUR, in Naples, Italy.
- Mission-essential travel justification: Representing NWC initiatives and briefing ADM Foggo on partnerships at NWC
- Section 3 of the METR form states: *Travel objectives cannot be adequately performed through alternative means such as teleconferencing, videoconferencing, or other real-time communications methods. Acknowledge by initiating True or False.* This section of the form was not filled out.

(8) On December 13, 2017, (b) (7)(C), (b) (6) embarked on his trip to Naples, Italy, to provide ADM Foggo an unclassified briefing. No members of the NWC RMSI traveled with (b) (7)(C), (b) (6)

(9) (b) (7)(C), (b) (6) returned to the U.S. on December 17, 2017, and subsequently filed a DD Form 1351-1 Travel Voucher. A review of travel records provided by the NWC showed that (b) (7)(C), (b) (6) was paid \$3,131.86 for expenses incurred during his trip to Naples, Italy. (Ex 31)

(10) On May 23, 2019, (b) (7)(C), (b) (6) was interviewed regarding this matter and detailed an exchange (b) (6) had with RADM Harley and sending a non [NWC] employee to brief

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ADM Foggo. When (b) (7)(C), (b) (6) stated to RADM Harley that (b) (7)(C), (b) (6) felt the NWC was ‘on the wrong side of the line’ on this²⁴, RADM Harley stated:

I appreciate you giving me that insight. That’s what you’re here for. But this is what ADM Foggo is looking for, and I think we can get to yes on this and stay on the right side of the line [referring to the funding of (b) (7)(C), (b) (6) travel]. (Ex 5:9)

- When (b) (7)(C), (b) (6) further commented about [the NWC] being on the wrong side of the line and the NWC was ‘assuming way too much risk on this,’ (b) (7)(C), (b) (6) recalled RADM Harley stating: “Well, I’m comfortable with more risk than you are.” (Ex 5:10-11)
- When the discussion of sending an NWC faculty member to brief ADM Foggo, or using Video-teleconferencing (VTC) for the briefing was broached with RADM Harley, (b) (7)(C), (b) (6) stated: “it came down to: No, ADM Foggo wants to see him face-to-face.” (Ex 5:16)

(11) On July 2, 2019, (b) (7)(C), (b) (6) was interviewed regarding his knowledge of (b) (7)(C), (b) (6) trip to brief ADM Foggo in Naples. (b) (7)(C), (b) (6) stated the NAVEUR staff was aware of the lunch/meeting request by (b) (7)(C), (b) (6) several weeks in advance. (Ex 32:5) (b) (7)(C), (b) (6) said he was present during (b) (7)(C), (b) (6) briefing to ADM Foggo on December 15, 2016, and stated:

- When (b) (7)(C), (b) (6) encouraged more naval engagement in the Port of Constanta [Romania] during his briefing, ADM Foggo clarified that NAVEUR was not in the energy business. ADM Foggo departed the meeting shortly afterwards. (Ex 32:17-18)
- (b) (7)(C), (b) (6) stated (b) (7)(C), (b) (6) talked at-length about the current state of the world and other matters. (b) (7)(C), (b) (6) estimated that ADM Foggo was present for roughly 15 or 20 minutes during the discussion regarding (b) (7)(C), (b) (6) briefing. (b) (7)(C), (b) (6) further stated:

He (b) (7)(C), (b) (6) –you know, he told us [NAVEUR staff] even before that he came that he only had—that this was the only reason he was coming, was for this one-hour meeting which we thought was not useful. Appropriation of time and money. But, you know, we [NAVEUR] also weren’t paying any of the bills, so it’s up to them, however they want to use their time. (Ex 32:29)

...even the EA wrote him (b) (7)(C), (b) (6) in the email, was like, “Hey, what else are you doing here, or are you going to check out sites?” And I -- it was kind of a implicit offer to -- if they need, you know, information on, you know, the surrounding area, that he could let him know because, you know, if you are coming for -- to Naples just for a one-hour meeting, we would never do that if we were planning a trip for the Admiral. So that’s just kind of our -- was our thought process. (Ex 32:29)

- (b) (7)(C), (b) (6) did not think that the use of video-teleconferencing, etc, was ever discussed as the NAVEUR staff thought that since (b) (7)(C), (b) (6) was going to be there, they could give him the time with ADM Foggo. (Ex 32:31)

²⁴ Referring to (b) (7)(C), (b) (6) not being a NWC employee and the NWC funding his trip to Naples.

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(12) On October 8, 2019, ADM Foggo was contacted regarding (b) (7)(C), (b) (6) trip to personally brief him on December 15, 2019. According to ADM Foggo: (Ex 24)

- He had no recollection of a direct exchange with RADM Harley regarding (b) (7)(C), (b) (6) briefing in Naples.
- ADM Foggo agreed to allow (b) (7)(C), (b) (6) to brief the NAVEUR Commander's Action Group because the topic of the brief was of interest.
- ADM Foggo did not agree to fund (b) (7)(C), (b) (6) trip.

(13) On July 3, 2019, (b) (7)(C), (b) (6) was interviewed regarding his trip to NAVEUR. (b) (7)(C), (b) (6) stated he had a long association with ADM Foggo. (Ex 22:22)

And so when I was developing this Black Sea option, it was obviously natural for me to have exchanges with him [ADM Foggo]. (Ex 22:22-23)

- When asked to elaborate on his trip to brief ADM Foggo, (b) (7)(C), (b) (6) stated:

I wanted to see ADM Foggo in person to talk about these particular issues. I sent him [ADM Foggo] an email. This was something I liaised directly with [ADM Foggo]....the War College had no role in it. (Ex 22:23)

- When (b) (7)(C), (b) (6) was asked if ADM Foggo requested (b) (7)(C), (b) (6) brief him in person, (b) (7)(C), (b) (6) stated: *"I wouldn't say he [ADM Foggo] requested. I think he [ADM Foggo] said 'that would be the best.'* (Ex 22:26)
- According to (b) (7)(C), (b) (6), he did not think the use of VTC, etc, was ever discussed with ADM Foggo. (Ex 22:27)
- (b) (7)(C), (b) (6) stated there was no purpose or action item for ADM Foggo in providing this briefing; it was hoped ADM Foggo would incorporate the information into his thinking. (Ex 22:33-34)

(14) In his Official Statement submitted on September 26, 2019, RADM Harley stated:

As I recall, based on earlier work (b) (7)(C), (b) (6) had completed related to the Black Sea and personal discussions he had had with (then) VADM James Foggo (prior to ADM Foggo's promotion and assignment as Commander US Naval Force Europe), VADM Foggo requested further briefings on the Black Sea from (b) (7)(C), (b) (6). This Black Sea Strategy briefing was completed in (b) (7)(C), (b) (6) capacity as a Highly Qualified Expert. Given the VADM's stated interest in this strategy briefing, I supported (b) (7)(C), (b) (6) providing it in Naples after a full legal review to ensure it was appropriate and within my authority. Given the new "global competition", particularly in this condensed and contested part of Eastern Europe, the VADM's direct and personal interest, and my specific mission to support combat readiness, I made the decision that an in-person brief to the Admiral was appropriate and in the best interest of the

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government, the Navy, and the NWC. I also ensured by telephone that VADM Foggo thought the briefing was appropriate for an in-person presentation. (Ex 23:3)

(15) On September 30, 2019, RADM Harley was interviewed regarding this matter and the circumstances leading to his decision for the NWC to fund (b) (7)(C), (b) (6) travel to brief ADM Foggo personally. RADM Harley was asked about communications with ADM Foggo regarding (b) (7)(C), (b) (6) visit, to which RADM Harley stated:

So let me be clear on this. I don't know what he asked me to send him (b) (7)(C), (b) (6) like it was unsolicited. He [ADM Foggo] was aware, probably from talking to (b) (7)(C), (b) (6), that there was a presentation on this idea, new NAVEUR Commander, and I was providing due diligence by just making sure that you're interested in this presentation from a War College Academic, and the answer was yes. And of course ADM Foggo and (b) (7)(C), (b) (6) have a long-standing relationship of strategic thinking. (Ex 12:58)

- RADM Harley related that he could not recall whether his conversation with ADM Foggo occurred over email or via telephone, but believed it was over telephone. (Ex 12:59-60)

- When RADM Harley was asked if an alternate means of communication, such as VTC was discussed, RADM Harley stated:

Sure. I think the idea was that they [ADM Foggo and (b) (7)(C), (b) (6)] have a long-standing friendship, that you can address these kind of issues better in person, that, you know, that this could have grown into a much deeper conversation about NAVEUR strategy. (b) (7)(C), (b) (6) is an -- was/is an advisor to EUCOM [US European Command] so, you know, it could have grown into something more than that I suppose. But no, I think the legal review requires us to say that this can be done best in person as most things can, to be honest, so. (Ex 12:66)

- RADM Harley stated (b) (7)(C), (b) (6) hour-and-a-half presentation to ADM Foggo on the future of strategy for NAVEUR was better conducted in person than by telephone or by VTC. (Ex 12:68)

- Regarding the economic aspects of (b) (7)(C), (b) (6) trip to brief ADM Foggo personally, RADM Harley stated:

For a few thousand dollars to personally brief a four-star just taking over and in alignment with my mission to provide combat readiness for the Fleet Commander, I absolutely thought it was important. (Ex 12:68)

- RADM Harley was provided a copy of the METR (Ex 24) for review. RADM Harley stated it was an oversight on his part when he did not annotate on the form whether alternate means [teleconferencing, videoconferencing, other real-time communications methods] were considered. (Ex 12:69)

- RADM Harley further clarified and stated:

This was a push from us [NWC] to give this briefing because we thought it could provide illumination as a possible subset of a strategy in NAVEUR.

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We developed one [briefing] that I thought could be important for ADM Foggo and wanted to have it delivered in person. (Ex 12:70)

- RADM Harley concluded by stating:

And if I were making that decision today, even if my staff said 'hey, you ought to do this by VTC,' we have an extraordinary travel budget in support of, in particular, as it should be, in support of the Fleet. And it's a small amount to pay to provide the level of expertise that we can. So I would not have changed that decision. (Ex 12:81)

B. Standards:

(1) Joint Travel Regulations

a. **Section 010202. Requirement to Travel.** *Travel is required when other means of conducting business, such as telephone calls or video teleconferencing, are unavailable or cannot meet the mission's needs. Approval of a travel order or authorization, by the AO, certifies that travel is required and that other means are not sufficient to accomplish the mission. Government-funded travel and transportation are used only when officially justified and by the means that meet mission requirements consistent with good management.*

b. **Section 0305 Invitation to Travel.** *An invitational travel authorization (ITA) is used to authorize the travel of an individual who is not employed by the Government or is serving without compensation or at \$1 a year, or is a volunteer covered by 10 USC §1588, or is employed intermittently by the Government under 5 USC §5703 as an expert or consultant and paid on a daily basis (when actually employed). An ITA cannot be issued to an individual who is a contractor's employee traveling in the performance of the contract. (For information regarding contractor travel see the DTMO website.) An ITA is not authorized for an individual merely to attend a meeting or conference, even if hosted by a DoD Component on a matter related to the Component's official business. The traveler must be an actual "participant" in the proceedings of the gathering, and not merely attending. An ITA is to be issued judiciously to ensure the prudent use of Government funds.*

(2) OPNAVINST 5450.207D, Mission, Functions, and Tasks of the Naval War College, para 3, states The mission of the NWC is to:

a. **Educate and Develop Leaders.** NWC shall provide current, rigorous and relevant professional military education (PME) programs supporting the Navy's Professional Military Education Continuum. These PME programs must meet the standards required in law and policy and be accessible to the maximum number of qualified U.S. officers and Navy enlisted personnel, civilian employees of the U.S. Government, and international senior enlisted leaders and officers. The education should foster an active and growing community linked by PME including leadership with professional ethics that furthers global maritime security. The desired effect is a career continuum of PME, including leadership development and professional ethics, which produces a group of leaders of character. These leaders have trust and confidence in each other and are operationally and strategically minded, critical thinkers, proficient in joint matters,

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and skilled naval and joint warfighters prepared to meet the operational level of war (OLW) and strategic challenges of today and tomorrow.

b. Support Defining the Future Navy and Associated Roles and Missions. NWC shall conduct research, analysis, and gaming to support the requirements of the Secretary of the Navy, the Chief of Naval Operations, the Combatant Commanders, the Navy Component Commanders, the Navy's numbered Fleet Commanders, and other departments and agencies of the U.S. Government. The desired effect is a program of focused, historically informed, forward-thinking, and timely research, analysis, and gaming that anticipates future operational and strategic challenges while developing and accessing strategic and operational concepts to overcome those challenges; assesses the risk associated with these concepts; provides analytical products that inform the Navy's leadership and help shape key decisions; and contributes effectively to the public discourse on U.S. national security policy.

c. Support Combat Readiness. NWC shall conduct OLW education, leadership and professional ethics training, education, and assessment activities to support the ability of the Navy's joint force maritime component commanders (JFMCCs) and Navy component commanders to function effectively as operational commanders. This effort shall include supporting the needs of joint force commanders, Navy component commanders, and the Navy's numbered fleet commanders for including operational planning, analysis, assessment, and wargaming to respond to emerging operational requirements. The desired effect is to improve the capability of Navy commanders to lead maritime, joint and combined forces; and their staff members to plan, execute, and assess force employment options in order to function cohesively within the context of an operational level maritime staff.

(3) **5 C.F.R. § 2635.101 Basic obligation of public service**, states:

(a) ***Public service is a public trust.*** Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) ***General principles.*** The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(4) **5 C.F.R. § 2635, Standards of Conduct for Federal Employees of the Executive Branch, paragraph 2635.704, Use of Government Property**, states:

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“An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.”

C. Discussion:

(1) Based on a preponderance of the evidence, we determined that RADM Harley violated the JTR when he inappropriately approved (b) (7)(C), (b) (6) travel to Naples, IT, to provide a one-hour briefing to ADM Foggo in-person, as mission essential. As stated in the JTR, Authorizing Officials will approve travel that is “necessary to accomplish the Government’s mission effectively and economically.” Furthermore, the JTR states that an Invitational Travel Authorization (ITA) is to be issued judiciously to ensure the prudent use of Government funds. Moreover, travel is required when other means of conducting business, such as telephone calls or video teleconferencing, are unavailable or cannot meet the mission’s needs. During his interview, RADM Harley did not provide a legitimate reason for why the use of an alternate means, such as VTC, would not meet, or was not an effective means, to accomplish the NWC mission. We note that the briefing was unclassified, produced in collaboration with other NWC staff, and was easily transmitted to NAVEUR’s staff prior to the trip. Additionally, witnesses interviewed also questioned why the use of an alternate means, such as VTC or phone, were not considered or utilized.

(2) RADM Harley’s justification for the in-person meeting – that ADM Foggo was a four star fleet commander – is unavailing. While it is true the relative seniority of the participants of a meeting is important in the analysis of whether government funds should be expended, it is not dispositive, and commanders must still consider whether alternate means were appropriate. Importantly, RADM Harley did not state or suggest that the NWC’s ability to accomplish its mission could potentially fail if (b) (7)(C), (b) (6) did not brief ADM Foggo in-person. Furthermore, during his interview, RADM Harley alluded to ADM Foggo and (b) (7)(C), (b) (6) ‘long-standing friendship’ as a reason why the briefing was required to be conducted in person. But a preexisting friendship is not a reasonable justification to spend appropriated funds on a \$3,000 trip to Italy for a one hour briefing – in fact, ADM Foggo and (b) (7)(C), (b) (6) previous relationship would have made the use of VTC or phone for this briefing arguably more appropriate, not less, because they were accustomed to each other’s style, demeanor, and delivery of information. Additionally, RADM Harley’s explanation that the NWC had a robust travel budget to support fleet commanders is not a legitimate justification for spending funds in this instance. And RADM Harley clarified that there was no conversation with ADM Foggo regarding the use of an alternate means for (b) (7)(C), (b) (6) to brief the information. The investigation did not identify corroborating information indicating that ADM Foggo made a specific request to the NWC to send (b) (7)(C), (b) (6) to Naples to brief him personally. The investigation did confirm, however, that ADM Foggo declined to fund (b) (7)(C), (b) (6) travel to Naples to provide the briefing in-person.

D. Conclusion: RADM Harley violated the Joint Travel Regulations when he approved (b) (7)(C), (b) (6) travel to Italy.

E. Recommendation: None

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(b) (7)(C), (b) (6)

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(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (6), (b) (7)(C)
[Redacted]

Allegation 7: RADM Harley improperly endorsed the NWCF and improperly encouraged NWC students to become members of the NWCF.

A. Facts:

(1) On March 5, 2018, RADM Harley sent an email entitled ‘Pay it forward with lifelong learning’ to the NWC student body from his government email account. (Ex 54) A portion of RADM Harley’s email related to the NWCF and stated:

An integral part of your year here that you may not have seen is the support that the Naval War College Foundation provides to the College. With \$2M in gift funds to the College, the Foundation Is more than 10 percent of our overall non-labor funding. The Foundation funds the extraordinary Speakers, faculty development, field trips, our cyber program, our endowed chairs, countless named Professors, myriad conferences, AND the student awards and receptions throughout the year...and so much more. We could not do what we do without the generous support of our Foundation who are great Americans who, well, pay it forward and make our nation, our Navy, and our Joint Force stronger.

It was my choice to become a life member because I wanted to pay it forward for future generations of students like you. Of course I cannot ask you to join an alumni organization, but I

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can tell you factually that there are ways to pay it forward if you choose. Many support organizations exist, and the War College Foundation is even located in Mahan Hall where they would be delighted to discuss the special discount rates for joining if you choose to pay it forward as I did and like so many others do.

Sincerely

Jeff "paying it forward is easy" Harley

Jeffrey Harley

Rear Admiral, USN

President, U.S. Naval War College

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Jeffrey.harley@nwc.navy.smil.mil

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(2) On June 19, 2018, (b) (7)(C), (b) (6) was interviewed regarding this matter and stated RADM Harley frequently thanked the NWCF at public events for NWCF contributions. (b) (7)(C), (b) (6) believed that these were within the standards by the Standards of Conduct Office (SOCO), Department of Defense.³³ (Ex 11:39)

• (b) (7)(C), (b) (6) further recalled one instance regarding RADM Harley endorsing the NWCF, stating:

I know there is a question about a particular email [Ex 54] for graduation last year, and in that email I think he got pretty close to the line there. He didn't ask for a review of it from [NWC GC] I saw it after it came out. I think the -- most of the email is acceptable under talking about past contributions. There is a section there which arguably could be an endorsement under the SOCO standards. (Ex 11:39)

(3) On July 1, 2019, (b) (7)(C), (b) (6) provided an email response detailing their knowledge of this matter, stating:

I provided advice on the topic to PNWC [RADM Harley] the day after the email [Ex 54] was sent – my advice was that the email could be construed as an endorsement under JER 3-209³⁴. I did not have a chance to review the email in advance as it was not PNWC's practice to route internal emails for review prior to sending. The date would correspond to the day after the email. I do not recall the date of the email].

I provided similar advice after an oral announcement during a NWC assembly where PNWC referenced the Foundation.³⁵ PNWC did not feel it was an endorsement despite the appearance concern (b) (7)(C), (b) (6) raised. PNWC and I had a lengthy discussion on the point, which is why as part of the ethics discussion in response to (b) (7)(C), (b) (6) letter to the CNO, PNWC directed me to inquire with OJAG Code 13 on a COA for the possible addition of the Navy Academic

³³ (b) (7)(C), (b) (6) reference is to the U.S. DoD SOCO, Misuse of Government Position and Resources section regarding Endorsements stating: A DoD official may not use or allow the use of his DoD position or title or any authority associated with his DoD position or title or any authority with his DoD position or title to endorse a non-federal entity, its services or products, unless the endorsement is made in furtherance of statutory authority. This prohibition includes endorsement of non-profit organizations that support the mission of DoD.

Source: https://ogc.osd.mil/defense_ethics/

³⁴ Joint Ethics Regulation 3-209, Endorsement.

³⁵ Naval War College Foundation (NWCF)

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Foundations to the JER 3-210 exception list, which would represent a DoD regulatory change rather than a statutory change to the federal ethics rules. I do not recall the date. (Ex 55)

(4) (b) (7)(C), (b) (6), was interviewed on July 5, 2019, regarding this matter. (b) (7)(C), (b) (6) was asked if he could recall instances where RADM Harley endorsed the NWCF, to which he stated:

So I would -- yes, I think he -- so we went through a number of rounds of legal reviews and back and forth with the JAG on trying to find out exactly what the Admiral could say and not run afoul of the regulations that said never on that. I think at first, we kind of found the line through trial and error, if that makes sense. But that being said, I think once we found the line, I think we did a pretty good job of making sure the Admiral stayed on -- on the right side of it. Once we kind of, like I said, worked through that with the JAG and Foundation and the "hey, like how do we -- how do we meet the Admiral's intent while keeping it legal?" I think once we found that balance, I think the Admiral did a good job, and we made sure putting in his speeches, you know, the little blurb about, you know, you should support your Naval War College Foundation, but also remember the other organizations that support your Navy. (Ex 56:74-75)

- (b) (7)(C), (b) (6) further clarified he could not recall a specific number of times when they felt RADM Harley may have gotten close to endorsing the NWCF. (b) (7)(C), (b) (6) added that RADM Harley wanted to find a way to get to 'yes' legally regarding publicly recognizing the contributions the NWCF makes to the NWC. (Ex 56:75)

(5) On September 30, 2019, RADM Harley was interviewed regarding this matter. RADM Harley stated that he consulted with the NWC Ethics Counselor about telling the NWC students about the NWCF:

So I talked to the ethics counselor saying, "Hey, you know, I'd like to just tell the students that there is a Naval War College Foundation," and about every -- three times a year, because that's how often we graduate, just prior to graduation, I put out an email that says, "Hey, there is a War College Foundation out there. They provide all of the funding for this, this, this, and this. I can't ask you to join the foundation, but I could encourage you, but I can encourage you to find a way to pay your experience forward." (Ex 12:224)

- RADM Harley stated that after he sent his first email (Ex 54) out [to the NWC students], some concern about this email was expressed:

And so after I did the first one, someone had expressed concern that, hey, you know, this is -- is this too close to sponsoring the Foundation which is a non-federal entity. So then I -- after the first one, I shared it with (b) (7)(C), (b) (6), and said, "Hey, there's a concern being expressed here about, you know, endorsing the Foundation. Can you look at it?" He said, "This is factual. You're okay with this." And then over time, as I did submit them to -- so the first -- very first one was submitted subsequent to the transmission of the email, because I just didn't know any better. In the succeeding ones, they were submitted with legal review, and it -- it is tailored down, depending -- I've had four ethics counselors in my three years, one OGC, and so it has been shown to be a place where OGC and the ethics counselors are satisfied that the email is not, you know, soliciting membership. (Ex 12:225)

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- After being provided the description of Endorsement, as defined in Section 3-209 of the JER, RADM Harley assessed two of the three email communications that he disseminated as “really close,” and “right up to the edge,” and according to RADM Harley, these communications received a legal review and were approved. (Ex 12:227-228)
- RADM Harley was not aware of any other instances where concern was expressed to him about his email communications regarding the NWCF.

B. Standards:

DoDD 5500.7R, JER, Section 3-209, Endorsement and Section 3-210, Fundraising and Membership Drives, states:

3-209, Endorsement. Endorsement of a non-Federal entity, event, product, service, or enterprise may be neither stated nor implied by DoD or DoD employees in their official capacities and titles, positions, or organization names may not be used to suggest official endorsement or preferential treatment of any non-Federal entity except those listed in subsection 3-210.

NOTE: The Naval War College Foundation is a non-Federal entity and is not listed as an exception in the regulation.

3-210, Fundraising and Membership Drives

a. DoD employees shall not officially endorse or appear to endorse membership drives or fundraising for any non-Federal entity except the organizations which are not subject to the provisions of subsection 3-211 of this Regulation.

NOTE: The Naval War College Foundation is a non-Federal entity and is not listed as an exception in the regulation.

C. Discussion:

1. Based on a preponderance of the evidence, we determined that RADM Harley violated Section 3-209 of the JER when he sent the 5 March 2018 email communication to the Naval War College’s student body. His discussion in the email, which was sent from his government account and included his rank, branch of service, and current title as the President of the Naval War College, praised the NWCF, a non-federal entity (NFE) not listed as an endorsement exception in the JER. From the standpoint of a reasonable observer, RADM Harley’s description of the NWCF in favorable terms, to the exclusion of all other NFEs, can only be read, at a minimum, as an implicit, if not outright stated endorsement of the NWCF and its activities.
2. Based on a preponderance of the evidence, RADM Harley also violated Section 3-210 of the JER when he sent the 5 March 2018 email communication to the Naval War College’s student body. From the standpoint of a reasonable observer, RADM Harley’s description in the email about how to “pay it forward” in conjunction with the relative ease and small financial burden of

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joining the NWCF as a member, to the exclusion of all other NFEs, amounted to, at a minimum, an appearance, if not outright official endorsement, of the NWCF's ongoing membership drive. By his own admission, RADM Harley stated that he was not initially aware of the possibility that his email communication might actually have been an inappropriate endorsement of the NWCF.

D. Conclusion: RADM Harley violated Section 3-209 of the JER when he endorsed an NFE, and in his official capacity as PNWC, suggested preferential treatment of an NFE. RADM Harley violated Section 3-210 of the JER when in his official capacity as PNWC, appeared to endorse a membership drive for the NWCF.

E. Recommendation: In addition to the VCNO's requirement that all flag officers receive annual in-person ethics training, we recommend the NWC SJA and Office of General Counsel provide more tailored legal guidance to the PNWC regarding the ethical rules associated with NFEs as specified in the JER, to include the NWCF.

Allegation 8: (b) (6), (b) (7)(C) [Redacted]

[Redacted]

Allegation 9: (b) (6), (b) (7)(C) [Redacted]

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(b) (7)(C), (b) (6)

Allegation 16: RADM Harley improperly used a non-government email account to conduct official Government business.

A. Facts:

(1) On September 24, 2018, (b) (7)(C), (b) (6) was interviewed regarding RADM Harley's use of his personal email, to which (b) (7)(C), (b) (6) stated:

So that is -- again, in the fog of war of staffs trying to keep up with their boss, we read the Admiral's email. He is aware of that and oftentimes we'll be able to stay ahead of requests and/or invites for issues because of that. (Ex 5:40-41)

There are times where he [RADM Harley] says, hey, you know, why haven't we done something with this? I need this information. And we all kind of confer and say, I'm not quite sure what the boss is talking about. And then when we'll circle back to him, he'll say, oh, yeah, that's on my other email. Let me forward that to you.

- When asked to clarify from what email account does RADM Harley forward email from, (b) (7)(C), (b) (6) stated: "...it's typically his -- his personal AOL account." (Ex 5:40-41)

(2) On February 19, 2017, RADM Harley received the below email in his personal AOL email account (b) (7)(C), (b) (6) from (b) (7)(C), (b) (6) requesting information regarding the description of a lecture series⁵⁵ In his email, (b) (7)(C), (b) (6) also inquired about an 'advisory board of Jim Stavridis, Phil Breedlove, (b) (7)(C), (b) (6)' ⁵⁶ and (b) (7)(C), (b) (6). (Ex 104)

From: Jeff
To: (b) (7)(C), (b) (6)
Cc: Harley, Jeffrey A., RADM , NAVWARCOL
Subject: Re: proposed lecture series
Date: Thursday, February 23, 2017 8:14:20 PM

(b) (7)(C), (b) (6) --sorry for delay...read the attachment scent of 1914 and think it is fine...the tone is a bit partisan which is acceptable if that is your intent. My suggestion would be to make the description more neutral lest one lose half the potential audience....

⁵⁵ This reference is presumably regarding the development of a lecture series (b) (7)(C), (b) (6) was scheduled to provide at the NWC in May 2017.

⁵⁶ ADM James Stavridis, DON (Retired); General Phillip Breedlove, U.S. Air Force (Retired)

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*I have a phoncon set up with (b) (7)(C), (b) (6) and trying to set up with gen breedlove...adm stavridis and i correspond on big issues.
Lets talk after i get through to (b) (7)(C), (b) (6) and the general...
All the best
jeff*

Sent from my iPhone

> On Feb 19, 2017, at 4:38 PM, (b) (7)(C), (b) (6) wrote:

Jeff--this is my latest draft for describing the lecture series. All comments welcome. And any more on the advisory board of Jim Stavridis, Phil Breedlove, (b) (7)(C), (b) (6) and me?

Best (b) (7)(C), (b) (6)

(3) On March 16, 2019, RADM Harley responded from his personal AOL email account to an email from (b) (7)(C), (b) (6) from his personal email account. A portion of the content in RADM Harley's email response was regarding funding deficiencies in the NWC budget and was of an official nature. (Ex 105)

From: Jeff (b) (7)(C), (b) (6)
To: (b) (7)(C), (b) (6)
Cc: Harley, Jeffrey A.,RADM, NAVWARCOL
Subject: Re: chat
Date: Saturday, March 16, 2019 12:10:46 PM

*Team here really likes where you all ended up!
Call anytime... (b) (7)(C), (b) (6)
Money is a problem...no word from N1 on Full Funding do hard to commit when I am already a few million dollars behind...
Definitely come up for whole week in June...*

On Mar 15, 2019, at 7:23 PM, (b) (7)(C), (b) (6) wrote:

Jeff: if you are around this weekend, we might have a chat about BTM. I think we should ask each of the services to send a senior rep. While they might not have a "speaking role," since we have so much Q and A time, we would welcome their intervention.

Also, do we have any travel money to invite retired four stars on the same basis. I would like to get Gen Phil Breedlove (he could be one of our fellows); a retired senior Army and Marine too.

About June 11/12, should I come up for the whole week with the strtegists on Monday and graduation? Happy to do so.

Best (b) (7)(C), (b) (6)

(4) On April 3, 2019, RADM Harley provided a response to an email received from his personal AOL account (b) (7)(C), (b) (6). A portion of the content in RADM Harley's email

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response was regarding the Breaking the Mold (BTM) conference and was of an official nature.
(Ex 106)

From: Jeff
To: (b) (7)(C), (b) (6)
Cc: Harley, Jeffrey A., RADM , NAVWARCOL
Subject: Re: BREAKING THE MOLD 3
Date: Wednesday, April 3, 2019 3:37:11 PM

Hello my friend! We are a bit behind on invitations as we sort out when the Under Secretary will speak! New goal is by mid-month (arrgh). I will get (b) (7)(C), (b) (6) to work the honorarium but will require an active role...will sort that out in next day or so so you can make plans.

*Will send my first two chapters by separate email. Chapter 2 under another review by my professors but i think we are pressing towards confirmation in May as scheduled...
Sincerely
jeff*

On Apr 3, 2019, at 2:24 PM, (b) (7)(C), (b) (6) wrote:

Dear Jeff,
I trust that all is good with you.
You kindly invited me to BTM 3 and indicated that further action should happen by 1 April. I have not received anything and just wanted to make sure that I h[a]d not slipped through the cracks. People are probably busy.
You also suggested that I might attract some financial assistance, which would be great given the time of year in Newport. However, if that is difficult, do not worry about me coming this time. I quite understand.

I hope that the PhD has reached cruise altitude and firmly en route towards its terminal dive onto the target. It would be good to see you, as always, and I am keen to see some of your text. (b) (7)(C), (b) (6) and I are also looking forward to seeing you over here again soon.

It's pandemonium over here at the moment in our political process with regard to our exit from the European Union. It's almost Civil War politically, with our equivalent of the Republican Party disintegrating under an increasingly wayward and possibly unhinged Prime Minister.
As ever,
(b) (7)(C), (b) (6)

(5) On September 30, 2019, RADM Harley was interviewed regarding this allegation. RADM Harley related his understanding of DoD policy and the need to ensure official records are preserved in a record-keeping system.

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- RADM Harley was asked how often he conducted official business from his personal AOL account after receiving an email that was of an official nature, to which RADM Harley believed twelve times was a reasonable number. (Ex 6:328-329)
- RADM Harley stated that no concerns were expressed to him about his use of his AOL account for official government business. (Ex 6:331)

B. Standards:

1. DODI 8550.01, DoD Internet Services and Internet-Based Capabilities. 11 Sep 12, Enclosure 3, Procedures, Section 5. Internet-based Capabilities (IbC), subsection (b.) Personal Use, subsection:

(3) Communication and Standards of Conduct

(a) “Barring absence of official communication channels, personal [email] accounts shall not be used to conduct official DoD communication. Personal accounts may be used to participate in activities such as professional networking, development, and collaboration related to, but not directly associated with, official mission activities as a DoD employee or DoD contractor”.

2. DoDI 8170.01, Online Information Management and Electronic Messaging, 2 Jan 19 (superseded DoD 8550.01 but includes guidance from the aforementioned policy memorandums), states in relevant part:

DoD personnel must not use personal email or other non-official accounts to exchange official information and must not auto-forward official messages to non-official accounts or corporate accounts...non-official account may not be used to conduct official DoD communications for personal convenience or preferences.

3. Deputy Secretary of Defense Memorandum Subject: Conducting Official Business on Electronic Messaging Accounts, 16 Jan 18, states:

In order to preserve the integrity, security, and accountability of Department operations, and to comply with the law, I expect all DoD personnel to use their official DoD email or other official DoD electronic messaging accounts when conducting DoD business.

Law and DoD policy are clear: “non-official electronic messaging accounts, “ including personal email accounts, must not be used to conduct official DoD communications, with very few exceptions, and intentional violations of this may be the basis for disciplinary action. Personal or other non-official email accounts may be used for official business only in those rare and extraordinary situations where an official email capability is not available. When this happens, the DoD official shall copy his official email account at the time of sending or forward the message to his official account within 20 days of sending the email.

C. Discussion:

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Based on a preponderance of the evidence examined, we determined RADM Harley committed a violation of DoDI 8550.01, DoDI 8170.01, and DepSecDef Memo, dated January 16, 2018, when he used his personal email account to conduct official business. In two of the instances provided, RADM Harley received email to his personal AOL account from the sender's personal email account. While RADM Harley mitigated the violation by correctly copying his official government email address in his responses or forwarded the email to his official government email address within 20 business days as required, he still conducted official business utilizing his personal email account on at least twelve occasions. Furthermore, there is no indication that RADM Harley's official government email account was not available during the instances when he utilized his personal account to conduct government business, a circumstance which may have justified his action in those "rare and extraordinary circumstances" outlined in the Deputy SECDEF memorandum. And even if that was the case, the emails in question were not "urgent DoD mission related", which may have justified RADM Harley's use of his private email account.

D. Conclusion: That RADM Harley violated DoDI 8550.01, DoDI 8170.01, and DepSecDef Memo, dated January 16, 2018, when he used his personal email account to conduct official business.

E. Recommendation: None

(b) (7)(C), (b) (6)

[Redacted text block containing multiple lines of blacked-out content]

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)

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(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)
[Redacted]

[Redacted]

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[Redacted]

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[Redacted]

Allegation 18: RADM Harley improperly allowed (b) (7)(C), (b) (6) to remain in a national security position after RADM Harley was notified of the DoD Consolidated Adjudications Facility (DoDCAF) decision to deny or revoke (b) (7)(C), (b) (6) eligibility for access to classified information, and/or assignment to duties designated national security sensitive, and/or access to Sensitive Compartmented Information (SCI).

A. Facts:

(1) On September 6, 2017, the DoD CAF notified the NWC Special Security Office (SSO) of the DoD CAF's preliminary decision to deny or revoke (b) (7)(C), (b) (6)] eligibility for access to classified information, assignment to duties that have been designated national security sensitive, and access to SCI. The notification stated the [NWC] was responsible for determining whether to suspend access to classified information and/or assign (b) (7)(C), (b) (6)] to non-sensitive duties pending a final personnel security decision. (Ex 115)

(2) On November 3, 2017, RADM Harley sent a letter to the Director, Department of the Navy Central Adjudications Facility (DoN CAF), disagreeing with the DoD CAF intent to revoke (b) (7)(C), (b) (6) security clearance and accesses. RADM Harley also provided a positive endorsement of (b) (7)(C), (b) (6) in his letter. (Ex 116)

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(3) On November 13, 2017, the DoD CAF notified (b) (7)(C), (b) (6) of its decision to deny or revoke his eligibility for access to classified information, and/or assignment to duties that have been designated national security sensitive, and/or access to SCI. (Ex 117)

- The DoD CAF notification mandated actions the NWC must take after receiving the DoD CAF decision:

If not already accomplished, your organization must comply with applicable regulations terminating the Subject's (b) (7)(C), (b) (6) access to classified information and/or assignment to duties that have been designated national security sensitive and/or access to SCI. (Ex 117)

(4) On September 14, 2018, (b) (7)(C), (b) (6) was notified that the DON Personnel Security Appeals Board (PSAB) had reviewed (b) (7)(C), (b) (6) appeal package and decided to uphold the DoD CAF final revocation of his eligibility for access to classified information and/or assignment to duties that have been designated national security sensitive. The notification to (b) (7)(C), (b) (6) further stated the decision was final, the administrative appeal process was concluded, and that his command [NWC] could recommend him for a security clearance one year after the date of their notification [September 14, 2018]. (Ex 118)

(5) On May 21, 2019, RADM Harley submitted a Request for Waiver of Application of Personnel Security Program to the Deputy Under Secretary of the Navy, Policy (DUSNP) regarding (b) (7)(C), (b) (6) revoked eligibility for access to classified information.⁶⁰ (Ex 119)

(6) On June 24, 2019, the NWC restricted (b) (7)(C), (b) (6) access to 'Visitor Only'. (Ex 120)⁶¹

(7) On July 23, 2019, (b) (6), (b) (7)(C), Acting PNWC, sent a request to DUSNP to withdraw the waiver request previously submitted by RADM Harley, dated May 21, 2019, with no further action. (Ex 121)

(8) On June 20, 2019, (b) (7)(C), (b) (6) was interviewed regarding this matter. When asked if RADM Harley was aware of suspected policy violations [if (b) (7)(C), (b) (6) was allowed to remain his national security position], to which (b) (7)(C), (b) (6) stated: "*We did not know that there was a policy violation at the time. It was only in hindsight where we started working to determine what the policy was.*" (Ex 122:14)

- (b) (7)(C), (b) (6) further stated: *And I did tell him [RADM Harley] –again, just before my departure I said, 'Sir, we're working on this, and the indications might be that we're going to*

⁶⁰ RADM Harley's waiver appeal was submitted eight months after DoN PSAB upheld the DoD CAF final revocation of (b) (7)(C), (b) (6) security clearance. During this time, (b) (7)(C), (b) (6) remained in a national security position.

⁶¹ Between November 13, 2017, and June 24, 2019, (b) (7)(C), (b) (6) remained in a national security position and maintained continued access to the NWC systems and network containing controlled unclassified information (CUI).

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have a definitive policy answer on this that's going to, basically, force our hand.' So he knew that was a possibility. (Ex 122:14-15)

- (b) (7)(C), (b) (6) concluded their statement with:

I would just say that RADM Harley was always concerned about the individual, so he was—he wanted to make sure that we looked from a two dimensional standpoint whenever we were making those types of decisions, you know, not just, hey, this is the bureaucratic way forward. He said, you know 'This is a human being. Let's make sure we look at what's going on and what we're doing and make sure we're doing it the right way.' (Ex 122:19-20)

- On June 20, 2019, (b) (7)(C), (b) (6) provided additional information, stating:

This was the basis of PNWC's decision not to terminate (b) (7)(C), (b) (6) employment...work did not require classified access. The issue of a policy conflict came up a few months later when (b) (7)(C), (b) (6) attempted to apply for access to the MPT&E portal (unclass but SAAR-N required.) That began the lengthy process of looking at both OPM and DUSN Security guidance to determine a way forward and define actual requirements. [NWC] OGC indicated there were some competing statutes that he was trying to get clarify on via the respective staff legal counsels. After some digging, (b) (7)(C), (b) (6) indicated that there was risk that our previous actions would not be upheld by the policy interpretation which I passed along to PNWC. He did not wish to change course at that time. If memory serves we were awaiting final disposition before reengaging (b) (7)(C), (b) (6) status which was about the time I was PCSing. (Ex 123)

(9) On October 1, 2019, RADM Harley was interviewed regarding this matter and detailed the actions he took and in response to (b) (7)(C), (b) (6) security clearance and position, stating:

(b) (7)(C), (b) (6)

- As a result of (b) (7)(C), (b) (6) receiving the DoD CAF revocation of his clearance and access to classified information, RADM Harley stated:

My position was—OK, we'll pull your (b) (7)(C), (b) (6) access to the SIPRNET--you don't need access to classified materials. But there's no reason why you can't communicate with your colleagues on the unclassified .edu net based on the definition of what access really means. (Ex 124:5)

There was a push at the College, for reasons I don't understand other than perhaps a little bit of Draconian thinking that, nope, if you lose your clearance, you must be escorted off the campus. I disagreed, as the Commander—I disagreed. (Ex 124:5)

- RADM Harley further described the course of action that he decided to take regarding this:

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...there's a waiver process. So (b) (7)(C), (b) (6) was still under the final approval waiver process that had to go to the Chief of Naval Operations to determine if I had to remove him (b) (7)(C), (b) (6) from his position because the positions are designated as national security critical, or some terminology like that. (Ex 124:5-7)

But the heart of the issue is that waiver process was in-progress, that this wasn't a function of me not complying with guidance to remove his access—I most certainly did remove his access to classified material. And, in terms of his long-term employability, we decided to pursue the authorized waiver process to the Chief of Naval Operations. That's what I remember. (Ex 124:6)

- RADM Harley was asked what authorized him to make the determination that as (b) (7)(C), (b) (6) progressed through the CNO waiver process⁶² he (RADM Harley) could override the DoD CAF final revocation. (Ex 117) RADM Harley stated:

Well, I disagree with the wording. I didn't override the final revocation, and the revocation isn't [necessarily] tied to the national security position. What we're talking about is a revocation of access to classified materials. I took that away from him. (Ex 124:7-8)

The differentiation between the national security position is the ability to work at the College, but it's not about access to classified materials. DoD CAF took away his clearance to classified materials. We therefore withdrew his clearance from accessing classified material, but we allowed him to continue with unclassified net access. (Ex 124:8-9)

Meanwhile the broader issue of, hey, we got to take a box down and walk him off the campus because he no longer has access to classified materials in a job where he doesn't need access to classified materials allowed us to pursue the DoD waiver process, to get that final determination from the CNO. (Ex 124:9)

So this issue of the national security position was still in play, but I believe as the Commander of the organization, with my understanding of the clearance, and access, and procedures, which I'm fairly well versed in, I believe that it was reasonable, quite reasonable, and a command decision to allow him to remain with access to unclassified materials. (Ex 124:9-10)

- When further asked if the relationship between eligibility and suitability and a DoD CAF revocation was explained to him, RADM Harley stated:

I don't think that specifically was explained, but again—if he (b) (7)(C), (b) (6) doesn't have need for a security clearance other than unclassified access, which most people don't talk about in that way but I get it. But if he doesn't need a clearance to perform any of his duties, and they've simply taken away his access to classified materials, there's no reason why he can't continue on having access to classified materials. That was the decision I made. The broader decision about—he's in a national security position, arguably, and whether that means that his employment has to be terminated, it is a function of being in that position and having a

⁶² SECNAV M-5510.30, 1-10 Waivers states: When a commanding officer finds that fulfilling the requirements of this regulation will result in an untenable sacrifice of operating efficiency, or when there are other good and sufficient reasons, a waiver of a specific requirement may be requested from the Chief of Naval Operations (N09N2) via the administrative chain of command.

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revocation of clearance to classified materials, we followed with due diligence the process of a waiver process to go to the CNO. (Ex 124:10)

- RADM Harley clarified further, stating:

We talked our way through it, we talked about what the course of options were. The decision was made to, you know, pursue the waiver process, which allowed him (b) (7)(C), (b) (6)] to maintain his employability. That because there is a waiver process inherent in that, that is the, is obviously Commander's judgement as to whether the person is suitable until the waiver process is complete. (Ex 124:12)

- RADM Harley did not recall having discussions with the Command Security Manager or Command SSO regarding (b) (7)(C), (b) (6)] eligibility and suitability to obtain a security clearance. (Ex 124:11)

- RADM Harley stated that he complied with the DoD CAF revocation when he removed (b) (7)(C), (b) (6)] access to classified information. (Ex 124:20)

- When asked about the NWC GC advisement that the previous decision he made regarding (b) (7)(C), (b) (6)] may not have been the right decision, RADM Harley stated:

Okay. Lawyers advise, commanders decide. I'm not being snarky here, but lawyers advise. We went through this in exhaustive detail trying to do the right thing, looked at all of the parameters. And I'm aware of -- a waiver process will stay the course. I don't see the need to walk into his office with a box and escort him off the campus when he has -- when he has appropriate access to unclassified materials, which is all that he needs to perform his functions.

The suitability and eligibility, which is a different fear, is a discussion that takes us to the waiver process. We were following the waiver process based on his experience, based on the assessment of his chain of command, and my decision, I think it's an appropriate decision. (Ex 124:15-16)

- RADM Harley further commented on eligibility and suitability, stating:
And eligibility and suitability, we're going to -- those two I argue is covered within the national security position, our faith in his (b) (7)(C), (b) (6)] ability to manage the unclassified information that he has access to, which his chain of command had faith, I had faith, DoD CAF revokes his clearance to classified material, we revoke his access to classified material as required, we pursue the waiver process while this is ongoing. Fully within my authorities. (Ex 124:17)

Under wise counsel from our office of general counsel I can disagree with the general counsel, and I felt it was my duty to do just that. There was no reason to remove him (b) (7)(C), (b) (6)] from his position until the waiver process was exhausted. (Ex 124:17-18)

B. Standards:

5 C.F.R. § 1400.201 – Sensitivity level designations and investigative requirements, states:

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(a) For purposes of this part, the head of each agency must designate, or cause to be designated, a position within the department or agency as a national security position pursuant to § 1400.102(a). National security positions must then be designated, based on the degree of potential damage to the national security, at one of the following three sensitivity levels:

(1) Noncritical-Sensitive positions are national security positions which have the potential to cause significant or serious damage to the national security, including but not limited to:

- (i) Positions requiring eligibility for access to Secret, Confidential, or “L” classified information; or
- (ii) Positions not requiring eligibility for access to classified information, but having the potential to cause significant or serious damage to the national security.

(d) Any position receiving a position sensitivity designation at the noncritical-sensitive level shall automatically carry with that designation, without further agency action, a risk designation under 5 C.F.R. 731.106 at the moderate level, unless the agency determines that the position should be designated at the high level.

DoDI 5200.02, DoD Personnel Security Program (PSP), states:

3. Policy. It is DoD policy that:

g. No person shall be deemed to be eligible for a national security position merely by reason of Federal service or contracting, licensee, certificate holder, or grantee status, or as a matter of right or privilege, or as a result of any particular title, rank, position, or affiliation.

h. No person shall be appointed or assigned to a national security position when an unfavorable personnel security determination has been rendered.

Enclosure 3, National Security Positions

1. Procedures. The objective of the PSP is to ensure persons deemed eligible for national security positions remain reliable and trustworthy.

a. Duties considered sensitive and critical to national security do not always involve classified activities or classified matters.

b. Employees with access to automated systems that contain active duty, guard, or military reservists' personally identifiable information or information pertaining to Service members that are otherwise protect from disclosure by DoD 5400.11-R, may be designated as national security positions within DoD, where such access has the potential to cause serious damage to national security.

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3. Adjudication

a. Personnel security criteria and adjudicative standards are described in [Executive Order, Director of National Intelligence Directive, DoD Directive, DoD Manual, DoD Regulation] in accordance with Adjudicative Guidelines For Determining Eligibility For Access to Classified Information and other types of protected information or assignment to national security positions. Adjudications of eligibility for national security positions, regardless of whether they involve access to classified information, must be made in accordance with the Adjudications Guidelines For Determining Eligibility For Access to Classified Information.

b. When an unfavorable personnel security determination is rendered:

(1) Individuals cannot be appointed or assigned to a national security position.

(2) An individual currently occupying a national security position will be immediately removed from the national security position and placed, in accordance with agency policy, in an existing non-sensitive position if available. Placement in a non-sensitive position requires compliance with employment suitability standards. The national security position is not to be modified or a new position created to circumvent an unfavorable personnel security determination. The individual is to be placed in an appropriate status, in accordance with agency policy, until a final security determination is made. A final security determination is the granting, denial or revocation by an appropriate central adjudications facility or an appeal board decision, whichever is later.

SECNAV M-5510.30, Department of the Navy Personnel Security Program, states:

5-3 Criteria For Designating Sensitive Positions

1. The following criteria for designating position sensitivity for DON employees is based on OPM and DoD criteria.

c. Noncritical-Sensitive (NCS): Any position that involves:

(3) Duties involving education and orientation of DoD personnel

DODI 1402.06, Civilian Faculty Positions in Department of Defense (DoD Post-Secondary Educational Institutions, states:

3. Definitions

3.1. Civilian Faculty Positions. Positions at a DoD post-secondary educational institution whose incumbents are appointed pursuant to the authorities in Reference (b) and whose primary duties involve teaching, lecturing, instructing, facilitating discussions in seminars, conducting scholarly research and writing, designing or developing curricula and/or learning support

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systems, providing academic advice or consultation, management and governance of the academic enterprise or an educational program (e.g., dean, director, department chair or head, president, vice president, provost, or the equivalent), and/or performing duties that are commonly understood to be duties appropriate for a member of the faculty of a fully accredited postsecondary academic institution in the United States.

C. Discussion:

Based on a preponderance of the evidence, we determined that RADM Harley violated Paragraph 3(b)(2) of Enclosure 3 of DoDI 5200.02, DoD Personnel Security Program (PSP), when he allowed (b) (7)(C), (b) (6) to remain in a national security position after (b) (7)(C), (b) (6) received an unfavorable personnel security determination by DoD CAF. This action was further upheld by the DON PSAB following submission of (b) (7)(C), (b) (6) appeal. Contrary to RADM Harley's assertion, he did not have discretionary authority to waive the requirement, when an unfavorable personnel security determination was rendered by DoD CAF, to immediately remove (b) (7)(C), (b) (6) from the national security position he was currently serving in. Furthermore, RADM Harley's removal of (b) (7)(C), (b) (6) access to classified information alone was not enough to ensure compliance with 5200.02.

D. Conclusion: That RADM Harley violated DoDI 5200.02 when he allowed (b) (7)(C), (b) (6) to remain in a national security position after (b) (7)(C), (b) (6) received an unfavorable personnel security determination from DoD CAF.

E. Recommendation: None

Allegation 19: RADM Harley failed to report potential compromise of sensitive/ classified information incorporated into an unclassified and publicly-released dissertation.

A. Facts:

Background:

(1) The War Gaming Department, Center for Naval Warfare Studies (CNWS/WGD), NWC, typically conducts eight major war games each year, on behalf of sponsors requesting war-gaming support from the NWC. The WGD receives data from the specific sponsors, and this data facilitates the department's literature review for the design and development of the war game. (Ex 125:34) All war-gaming data and information is maintained on the Top Secret enclave at the NWC. The WGD communicates continually with the war game sponsor during the war game design, development, and literature review process. (Ex 125:34) The WGD invests approximately six months designing, developing, and executing the war game on behalf of the sponsor. Upon conclusion of the war game, the WGD spends two months processing and analyzing the information developed during the war game. After the war game data is processed and analyzed, the WGD provides the information back to the sponsor. Based on the eight-month life cycle of each war game, the NWC WGD is simultaneously involved in four war games at any given time. (Ex 125:34)

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(2) The WGD conducts an annual war game on behalf of U.S. Strategic Command (USSTRATCOM) (sponsor). Prior to and during the development of each war game, USSTRATCOM provides classified data and information to the WGD. (Ex 125:34)

(3) In approximately [July] 2016, (b) (7)(C), (b) (6), then serving as a (b) (7)(C), (b) (6) contacted a former CNWS/WDG faculty member and requested assistance in obtaining unclassified data to use for (b) (6), (b) (7)(C) doctoral dissertation. At the time of (b) (6), (b) (7)(C) request to the former CNWS faculty member, (b) (7)(C), (b) (6) was a cyber-SME assigned to USSTRATCOM. The former CNW faculty member subsequently produced a raw data extrapolation from data accumulated between 2011 – 2016, specific to war games conducted on behalf of USSTRATCOM. This data was provided to (b) (6), (b) (7)(C) as requested. (Ex 126)

(4) On May 21, 2017, (b) (7)(C), (b) (6) published (b) (6), (b) (7)(C) PhD dissertation for George Washington University, entitled: (b) (6), (b) (7)(C) of (b) (7)(C), (b) (6) dissertation is entitled: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C).” (Ex 126)

(5) During the first week of July 2018, an NWC faculty member reported that they read a blog post by (b) (7)(C), (b) (6) the blog post provided a hyperlink to a larger body of work published through Cornell University. The larger work was also authored by (b) (7)(C), (b) (6). The NWC faculty member became concerned that sensitive material from previous NWC war games was incorporated into (b) (7)(C), (b) (6) written works. The NWC faculty member brought their concerns to the attention of the CNWS/WDG. (Ex 126)

(6) On approximately July 5, 2018, the former CNWS faculty member contacted (b) (7)(C), (b) (6) regarding (b) (7)(C), (b) (6) published works and the NWC pre-publication review process prior to release in the public domain. (Ex 126)

(7) On June 26, 2019, (b) (7)(C), (b) (6) subsequently brought their concerns to (b) (7)(C), (b) (6). On July 12, 2018, a Preliminary Inquiry (PI) (Ex 126) was initiated to determine the facts and circumstances surrounding the possible leak of classified material at the U.S. Naval War College on or about 12 July 2018.

(8) On August 13, 2018, the findings of the PI were published and determined:

The subject investigation revealed that no SCI was compromised. Raw data was gathered from multiple wargames conducted by NWC under USSTRATCOM sponsorship, specifically between 2011-2016. At the request of (b) (7)(C), (b) (6), a PhD candidate at George Washington University, and (b) (6), (b) (7)(C) NWC Assistant Professor, a data package was developed and handed over which both classifier and recipient believed to be unclassified, although derived from wargames held a[t] the TS/SCI level. (b) (7)(C), (b) (6) conducted longitudinal analysis and published (b) (6), (b) (7)(C) dissertation and other subsequent related products in open source. The specific quotes, decisions, and trends

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associated with this analysis may constitute an unauthorized disclosure of at least For Official Use Only (FOUO), and possibly up to the SECRET level information, in part because of the aggregation of [REDACTED] analytical findings. The publications did not undergo a pre-publication review, in part because the author believed in good faith that due diligence had been conducted to ensure underlying data were unclassified, and that classification to a higher level by compilation and aggregation was not appropriate.

- A review of the PI report indicated that no SCI was compromised but did not specifically address whether sensitive/classified information below the SCI-level had been compromised as a result of (b) (7)(C), (b) (6) writings. (Ex 126)
- Eleven witnesses were interviewed during the course of the PI. Of the eleven witnesses interviewed, eight testified that they felt that the information contained in (b) (7)(C), (b) (6) written products was above the unclassified level primarily due to the aggregation of information contained in the report. These witnesses testified the referenced information ranged in classification levels up to and including Top Secret, although there was not a clear consensus among the interviewed witnesses regarding the perceived level of classification of referenced information in (b) (7)(C), (b) (6) products. Additionally, these witnesses also believed some of the information was FOUO as well. (Ex 126)

(9) On May 17, 2019, a Post Investigation Action Memorandum for the Record (MFR) was drafted and submitted to RADM Harley for review and signature. (Ex 127) This MFR was drafted by the NWC SSO. Block 1c of the MFR stated:

There was no release of Top Secret/SCI material. NCIS has been notified along with the sponsoring organization due to the possible [compromise] of Secret material.

(10) On May 28, 2019, RADM Harley reviewed and signed an edited version of the Post Investigation Action MFR, (Ex 128) which stated:

*I concur with the findings of the investigation and believe that the personnel involved acted on their best professional judgement, knowledge, and experience. Although the individual did not follow proper security reviews, I have determined that there was no compromise of classified material.*⁶³

(11) On June 20, 2019, (b) (7)(C), (b) (6) was interviewed and testified, stating that it had been six to eight months before it was discovered that (b) (7)(C), (b) (6) writings had been posted to the Cornell University website and in the public domain. (Ex 122:21)

- (b) (7)(C), (b) (6) said that (b) (7)(C), (b) (6) requested unclassified data to substantiate [REDACTED] doctoral thesis, which was subsequently published. (Ex 122:21)

⁶³ The purpose of the edited version of the Post Investigation Action MFR was to clarify for the record that not only did the NWC PI not find any release of Top Secret/SCI material, but also that no classified information, including any confidential or secret information, was compromised. (Ex 128)

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- (b) (7)(C), (b) (6) further stated (b) (7)(C), (b) (6) was appointed as the PIO:

(b) (7)(C), (b) (6) was] to do a preliminary inquiry as to what might have happened and what was out there. And we were obviously sensitive with it because we didn't want to further any information out there that might have been compromised. So we looked into that, and there was a lot of opinion on the topic of what the information might be, whether it was an aggregate issue. (Ex 122:21-22)

The results [of the PI] were there was—that the investigator did not believe any TS/SCI material had been compromised. Debatable as to whether anything at the Secret level had been compromised but that we wanted to look into how we do our review to ensure we get the right level of peer review before something leaves the classified arena or gets published. (Ex 122:22)

- (b) (7)(C), (b) (6) was asked about the information contained in (b) (7)(C), (b) (6) report and it not being original to the NWC, and derived from a classified document. (b) (6), (b) (7)(C) stated:

Well, so that's – that's part of the challenge is that we [NWC] host wargames for sponsors, and I believe in this case the sponsor would be [USSTRATCOM]. They come to our college. They provide a fair amount of information. They are the agent responsible for the classification of the information. (Ex 122:25)

But we run our games, and we do analysis, and the question that kind of then came up is our analysis derivatively classified, or do we original work that requires OCA authorities. (Ex: 122:25)

So that was another kind of strand that came out of what we had looked into. And again, there was not a consistent agreement across the staff as to whether we had responsibility for control of that information. I shouldn't say control. Like, obviously, we handle it appropriately but release of that information because it wasn't ours. (Ex 122:25)

So that was another bone of contention as to, hey, is any wargaming info whether it's from analysis or, you know, tangential information that comes out of that our professors work on, is that then owned by the sponsor for a classification responsibility, and then how does that work? (Ex 122:26)

So that was still a little—a little, I guess, murky as to what those lines were, which is why we were looking at, hey, you know, let's go back with the OCA process, make sure the boss [RADM Harley] has that authority and then look at how we can update our internal guides. (Ex 122:26)

- When asked how RADM Harley made the determination and decision not to contact USSTRATCOM as a potential OCA of a compromise, (b) (7)(C), (b) (6) stated RADM Harley based his decision on the report [(b) (7)(C), (b) (6) report that he reviewed] and his own assessment of the material. (Ex 122:27)

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- (b) (7)(C), (b) (6) opined that RADM Harley's decision not to notify USSTRATCOM was not based on a concern regarding [creating a bad] relationship between USSTRATCOM and the NWC and the NWC's handling of USSTRATCOM material. (Ex 122:28)

(12) On June 25, 2019, (b) (7)(C), (b) (6) was interviewed and stated that after their review of (b) (7)(C), (b) (6)'s dissertation, he found some material that related directly to a Top Secret SCI War Game conducted for USSTRATCOM. The information related directly to nuclear deterrence and escalation. (Ex 129:3)

- (b) (7)(C), (b) (6) stated he has twenty years of war-gaming experience at the NWC.

- (b) (7)(C), (b) (6) further stated he believed that the insights found in the material (b) (7)(C), (b) (6) [redacted] dissertation] would be very sensitive. (b) (7)(C), (b) (6) clarified and said:

The material itself pertaining to that game, the data for that game is – was recorded on our own stand-alone Top Secret SCI gaming enclave that we have here at the War College and so all the material is stored for all of our SCI games on that enclave and all of its considered Top Secret SCI, unless declassified by the appropriate original classifier, which we are not the original classifier. (Ex 129:4)

So all of the material would have belonged to STRATCOM for them to declassify and I don't believe that it had went through that process. (Ex 129:4)

- (b) (7)(C), (b) (6) stated he did not discuss the matter with RADM Harley, nor did he have any knowledge of RADM Harley's position to keep this matter in-house. (Ex 129:10)

- When asked why [NWC] Command leadership would not notify the OCA out of an abundance of caution regarding this matter, (b) (7)(C), (b) (6) stated:

It would probably – you know, it might have called into question—questioned the College's ability to protect its own classified information. It might have caused embarrassment to the College. It might have exposed one of their female faculty to criticism that they felt was unnecessary and it might have caused embarrassment to the game sponsor [USSTRATCOM]. (Ex 129:18-19)

(13) On June 26, 2019, (b) (7)(C), (b) (6) [redacted], Center for Naval War Studies, NWC, was interviewed and testified regarding this matter.

- (b) (7)(C), (b) (6) stated he was appointed in August 2018 as the investigating officer to conduct the PI into an alleged compromise of sensitive information by (b) (7)(C), (b) (6). (Ex 130:5)

- (b) (7)(C), (b) (6) stated that he was to 'very explicitly address' whether or not TS/SCI information had been compromised. (Ex 130:33)

- (b) (7)(C), (b) (6) stated that he did not have individual discussions with RADM Harley during the investigation or after, regarding this matter. (Ex 130:7)

- Regarding his conclusions, (b) (7)(C), (b) (6) stated:

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My conclusion was that there was fundamentally no release of information at the classification level that was of primary concern [SCI] and that there were unclear guidelines as to whether or not there was any classified information in there, but that fundamentally it was at least FOUO information and should have not have been in the public domain. (Ex 130:9)

- When asked that in his view, was any of the material at the Secret or Secret NOFORN level, (b) (7)(C), (b) (6) stated: “*It could have been interpreted as such.*” (Ex 130:10)

- (b) (7)(C), (b) (6) further clarified and stated:

But -- but that frankly this gets back to some of the systemic issues that much of that assessment is going to be more subjective than objective, in part because of the fact that there were no current security classification guides associated with the -- the underlying material and that it -- it was subject to some interpretation. (Ex 130:10)

And that there was a process, but the process to determine whether or not it -- there was classified information there could have been improved. But that there was at least some clear understanding that some of the material that was used to produce the products may have been unclassified. (Ex 130:10)

- (b) (7)(C), (b) (6) was asked if any attempts to contact USSTRATCOM were made, as a precautionary matter, and ask for their assistance to help understand and properly classify their information in (b) (7)(C), (b) (6) report. (b) (7)(C), (b) (6) responded:

There were no individuals who were involved in generating the product set -- that was given to (b) (7)(C), (b) (6) who attempted to contact anyone in STRATCOM to either get permission for or to have a security review of the survey dataset that was forwarded to (b) (7)(C), (b) (6). (Ex 130:17)

- (b) (7)(C), (b) (6) did not believe RADM Harley favored a lean security posture at the NWC to encourage public release of academic products produced by the NWC faculty.

(b) (6), (b) (7)(C) further stated:

I think it would be fairer to say that he relied on the faculty to be able to work with each other and work within the command security procedures. (Ex 130:38)

I just don't think that the level of training and awareness was there and I'm not sure if he—how aware he was of the weakness of—of training and awareness across the faculty. (Ex 130:38)

And—and so my sense was it just—it was not a priority to address, perhaps because he was unaware that it was a weakness. He should have become aware of it as a weakness if in fact he had read (b) (7)(C), (b) (6) report⁶⁴. (Ex 130:39)

(14) On June 26, 2019, (b) (7)(C), (b) (6) was interviewed. (b) (7)(C), (b) (6) stated he reviewed (b) (7)(C), (b) (6) dissertation and “*did have a concern that [the] material may touch on classified topics, may not have been*

⁶⁴ The PI Report identified numerous Findings of Fact detailing deficiencies identified during the course of the inquiry. (Ex 126)

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properly reviewed.” (b) (6), (b) (7)(C) was compelled to recommend to (b) (7)(C), (b) (6) that a PI be conducted. (Ex 131:6)

- (b) (7)(C), (b) (6) stated that because (b) (7)(C), (b) (6) work was based on analysis of multiple war-games held by the NWC, all of which are classified Top Secret, (b) (7)(C), (b) (6) had a concern that Top Secret conclusions had been included in (b) (7)(C), (b) (6) dissertation. (Ex 131:7)
- (b) (7)(C), (b) (6) stated multiple members of the War Gaming department offered a variety of opinions to him; some members felt that (b) (7)(C), (b) (6) work had classified information in it and others felt maybe there was classified [information] in (b) (7)(C), (b) (6) work. (Ex 131:10)
- (b) (7)(C), (b) (6) said he was concerned about the ‘classification by compilation’ matter, but also because (b) (7)(C), (b) (6) was a knowledgeable participant in the war-gaming events, and therefore (b) (6) participation would ‘lend weight’ to (b) (6) conclusions. (Ex 131:9)
- (b) (7)(C), (b) (6) stated he had no indications that RADM Harley wanted to keep this matter ‘in-house’ and not make additional notifications external to the NWC. (Ex 131:17)

(15) On July 9, 2019, (b) (6), (b) (7)(C), NWC, was interviewed and stated other NWC faculty members expressed their concerns regarding the information contained in (b) (7)(C), (b) (6) report and the source of this data being at higher than unclassified [level] and should not be open-source. (Ex 125:6)

- (b) (7)(C), (b) (6) further stated that after they read the paper [(b) (7)(C), (b) (6) dissertation], he felt: *“there were numerous things in there that I thought that should not be at the [unclassified] level.”* (Ex 125:7)
- When (b) (7)(C), (b) (6) was asked to assess the classification level of the information in the dissertation after their review, (b) (7)(C), (b) (6) stated: *“I feel that the information should have been at least Secret, if not Top Secret.”* (Ex 125:9)
- (b) (7)(C), (b) (6) explained, stating: *“Just based on the nature of the game and the comments that (b) (6) [(b) (7)(C), (b) (6)] was making based on the game. The game itself is based – is classified TS/SCI.”* (Ex 125:9)
- Regarding the war game itself, (b) (7)(C), (b) (6) stated:

So, they [USSTRATCOM] come here, they do the game, we take the data, we analyze the data for a couple months, and then we write a game report providing insights and recommendations on what we saw during the -- the context of the game, and I think that's what (b) (6) [(b) (7)(C), (b) (6)] was basing that information on was the -- the war game reports that we did here at the War College. (Ex 125:10)

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- (b) (7)(C), (b) (6) further stated the classification level for the documents he believed (b) (7)(C) referred to were at the TS/SCI-level. (Ex 125:10)
- (b) (7)(C), (b) (6) said that a Security Classification Guide (SCG) was not available for either the USSTRATCOM information or for the derivative classified information produced by the NWC War Gaming Department. (Ex 125:11)
- (b) (7)(C), (b) (6) further clarified that the War Gaming Department reviews the information provided by the sponsor; this information includes the sponsors OP plans [Operational Planning documents] and other guidelines. This information is what the [war] game is based on. (Ex 125:12)
- (b) (7)(C), (b) (6) stated that he reported his concerns up through his chain of command but did not speak directly with RADM Harley regarding his concerns. (Ex 125:15)
- (b) (7)(C), (b) (6) further said that he did not agree with RADM Harley's final assessment PI MFR (Ex 128), nor did he agree with the results of the PI investigation (Ex 126). (b) (7)(C), (b) (6) stated the PI report did not address the question of whether any release of classified material occurred.⁶⁵ (Ex 125:23)
- (b) (7)(C), (b) (6) concluded by stating that the OCA [USSTRATCOM] should be informed that a portion of the data provided by the OCA might have been compromised. (Ex 125:29)

(16) On October 1, 2019, RADM Harley was interviewed regarding his recollection of this matter. RADM Harley offered a preliminary summarization of the matter and stated: *"The wargamers took offense to a non-wargamer researcher (b) (7)(C), (b) (6)] using some of their data and had—having interest in determining if there was a security issue in looking at that data."* (Ex 124:26)

- RADM Harley stated that he spoke with the Dean, CNWS, regarding the matter and it was the Dean's impression that *'this is just an internal food fight between the – within the CNWS.'* (Ex 124:26)
- RADM Harley recalled that the investigating officer determination that there was not, or most likely was not a security compromise, compelled him to review the information himself. RADM Harley stated:

I've read the blog post, I've looked at the information, and I would argue in accordance with my command authorities I determined that this really was just a food fight internal to one directorate. And consequently we did a memorandum for the record stating that I also examined the materials and determined that there was no security compromise. (Ex 124:27)

⁶⁵ The PI report only addressed if SCI-related material had been released. (Ex 126)

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- RADM Harley related that he read the PI report and further acknowledged the large number of witnesses interviewed during the PI that believed (b) (7)(C), (b) (6) work contained information above the unclassified level. To this, RADM Harley stated:

A lot of witnesses in the process have said, yeah, there's something here. But anything at your level where you thought, well, you know what, I've assessed it but also have all these other experts and maybe there's an additional thing that we need to do out of due diligence and abundance of caution to look into this matter? (Ex 124:33)

No, I think the -- I think this was reviewed as the due diligence, that we did the investigation, that we reviewed at the Dean level under (b) (7)(C), (b) (6), that we reviewed it -- and (b) (7)(C), (b) (6) / (b) (7)(C), (b) (6)] was also in the room with the discussion. We met like we always do on these kind of issues. We talked our way through it. We had all read the materials. We all drew the same conclusion. So there wasn't a -- there wasn't a discussion that said let's do more. (Ex 124:34)

I have no reason to want to hide a possible security breach. If I felt there was one, we would do the paperwork, that's what we do. But there's -- it has no damage to my career. It's simply a command decision where having read the whole thing, having talked to the leadership, having read the (b) (6), (b) (7)(C) report, I don't see that there's a classification breach here. (Ex 124:34)

- RADM Harley stated that concern over a notification to USSTRATCOM was not a consideration in his decision making process when he determined that a security violation did not occur.

- Regarding the war gaming data itself, RADM Harley stated:

This is raw, unclassified data from which (b) (6), (b) (7)(C) drew some conclusions in (b) (6), (b) (7)(C), you know, academic paper. Enough information from (b) (6), (b) (7)(C) chain of command supported the idea as indicated in my memorandum for the record, which you have. And all of us in the leadership team read the final report (b) (6), (b) (7)(C) PI report] and drew the same conclusions. (Ex 124:36)

- RADM Harley denied that academic freedom to publish was a consideration in his final determination that no classified material had been compromised. (Ex 124:36)

- When asked if the Combatant Commanders incorporate [NWC] wargaming results into some level of planning for their respective commands, RADM Harley stated: *"I think that's true."* (Ex 124:50)

- RADM Harley was asked if the witnesses⁶⁶ that testified that they believed classified information [in (b) (7)(C), (b) (6) dissertation and blog post] were incorporated into the final NWC leadership decision that no classified information had been compromised. RADM Harley stated these witnesses were represented by the Dean, CNWS. (Ex 124:44) RADM Harley stated "no"

⁶⁶ Referring to the witnesses who were interviewed by (b) (7)(C), (b) (6) during his PI. (Ex 126)

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when further asked if thought was given to fully addressing the matter because of the number of witnesses that expressed concern. (Ex 124:45)

- Upon conclusion of the interview, RADM Harley was asked if he would do anything differently in retrospect, to which RADM Harley replied:

Knowing what I knew then the answer is no. Knowing what I know now maybe, but I don't think so. We were very confident. And these are important -- when you're dealing with people like say the (b) (7)(C), (b) (6) case, or when you're dealing with classified materials, you know, you have to have a reasonable amount of confidence. (Ex 124:55)

And, you know, I'm willing to take the risk as a leader for the decisions that I make, that somebody could come back and second guess my leadership decision. But the decision that we made as a group, with me being ultimately responsible, and I own up to everything I do, is that no compromise occurred. We followed the appropriate rule sets. (Ex 124:55)

I mean, I'm -- well, I'm just reflecting on this idea of, well, you know, it is -- it is interesting to reflect on, you know, what you see as a predominance of indications one way, which when we read through it I suspect we negated some of it based on the, you know, the divide between the researchers and the wargamers. And fundamentally once you look at the raw data you go, okay, there's nothing here that you were going to extrapolate directly even in the amalgamation to get to a classified way. And fundamentally once you look at the raw data you go, okay, there's nothing here that you were going to extrapolate directly even in the amalgamation to get to a classified way. (Ex 124:56)

So when I say I might do something different, you know, I mean it in a way that would say, well, you know, it's, everything is always worthy of review. But at the time knowing what I knew, having done what we considered due diligence, I would stand behind this. (Ex 124:55-56)

- NAVINSGEN received notification on December 17, 2019, that the NWC determined notification to the USSTRATCOM Command Security Manager of this security incident was warranted and in progress.

B. Standards:

1. DoDM 5200.01-V3, DoD Information Security Program: Protection of Classified Information; Enclosure 6, Security Incidents Involving Classified Information, states:

1. Introduction. Protection of classified information is essential to maintaining security and achieving mission success in DoD operational and warfighting environments. Prompt reporting of security incidents ensure that such incidents are properly investigated and the necessary actions are taken to negate or minimize the adverse effects of an actual loss or unauthorized disclosure of classified information and to preclude recurrence through an informed, properly tailored, and up-to-date security education and awareness program. In cases where compromise has been ruled out and there is no adverse effect on national security, a common sense approach to the early resolution of an incident at the lowest appropriate level is encouraged. All security

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incidents involving classified information shall involve a security inquiry, a security investigation, or both.

(1) **Infraction.** An infraction is a security incident involving failure to comply with requirements (i.e., the provisions of References (d) and (f), this Manual or other applicable security policy) which cannot reasonably be expected to, and does not, result in the loss, suspected compromise, or compromise of classified information. An infraction may be unintentional or inadvertent. While it does not constitute a security violation, if left uncorrected, can lead to security violations or compromises. It requires an inquiry to facilitate immediate corrective action but does not require an in-depth investigation.

(2) **Violation.** Violations are security incidents that indicate knowing, willful, and negligent for security regulations, and result in, or could be expected to result in, the loss or compromise of classified information. Security violations require an inquiry and/or investigation.

(a) **Compromise.** A compromise is a security incident (more specifically, a violation) in which there is an unauthorized disclosure of classified information (i.e., disclosure to a person(s) who does not have a valid clearance, authorized access, or a need to know).

(b) **Loss.** A loss occurs when classified information cannot be physically located or accounted for (e.g., classified information/equipment is discovered missing during an audit and cannot be immediately located).

(3) **Inquiry.** An inquiry is fact-finding and analysis conducted to determine whether or not there was a loss of classified information or whether or not unauthorized personnel had, or could have had, access to the information. The inquiry identifies the facts, characterizes the incident as an infraction or a violation, identifies if possible the cause(s) and person(s) responsible, reports corrective actions taken or to be taken, and makes recommendations as to the need for further corrective action or a more in-depth investigation. Inquiries, generally, are initiated and conducted at the lowest echelon possible within the DoD Component.

(4) **Investigation.** An investigation is conducted for a security violation when the incident cannot be resolved via inquiry or for incidents where an in-depth and comprehensive examination of the matter is appropriate.

b. Certain practices dangerous to security, while not reportable as security incidents, have the potential to jeopardize the security of classified information and material if allowed to perpetuate. Examples of such practices are: placing a paper recycling box next to a classified copier or placing burn bags next to unclassified trash containers; stopping at a public establishment to conduct personal business while hand-carrying classified information; or failing to change security container combinations promptly when required. These practices, when identified, must be promptly addressed by security management and appropriate changes made, actions taken, or training provided, to ensure the security of classified information.

2. **Consequences of Compromise.** The compromise of classified information presents a threat to the national security and may damage intelligence or operational capabilities; lessen the DoD

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ability to protect critical information, technologies, and programs; or reduce the effectiveness of DoD management. Once a compromise is known to have occurred, the seriousness of damage to U.S. national security or the extent of the adverse affect on the national security must be determined and appropriate measures taken to negate or minimize the adverse effects. When possible, action shall also be taken to regain custody of documents or material that was compromised. In all cases, security management must take appropriate action to identify the source and reason for the suspected or actual compromise and take remedial action to prevent recurrence.

3. Reporting and Notifications

e. If the head of an activity or the activity security manager to whom an incident is initially reported does not have security cognizance over the incident, such official shall ensure that the incident is reported to the appropriate authority. The organization with security cognizance shall ensure that an inquiry and, when appropriate, investigation are conducted, as needed, consistent with the requirements of this enclosure and corrective action is taken as required.

f. Reporting confirmed security incidents to the Director of Security, OUSD(I), is necessary when the incidents have or may have significant consequences or the fact of the incident may become public. Such incidents shall be reported promptly through appropriate security channels by the DoD Component senior agency official. When appropriate, preliminary reports shall be provided, particularly when the fact of the incident may become public or attract media attention.

(1) The Director of Security, OUSD(I), shall be notified of:

- (a) A violation involving espionage.
- (b) An unauthorized disclosure of classified information in the public media. Additional notification is not required for reference to or republication of a previously identified media disclosure.

2. SECNAVINST 5510.36A, Department of the Navy (DON) Information Security Program (ISP) Instruction, states:

1. Purpose

- a. Establish uniform Information Security Program (ISP) policies and procedures.
- b. Implement reference (a), which directs agencies to observe the democratic principles of openness and the free flow of information, as well as to enforce protective measures for safeguarding information critical to the national security.
- c. Incorporate policies and procedures established by other executive branch agencies.

4. Applicability and Scope

- a. This instruction and the accompanying policy and procedural manual, reference [SECNAV M-5510.36], encompass all classified national security information classified under Executive

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Order 12958, as Amended, and predecessor orders, and special types of classified and controlled unclassified information.

b. This instruction applies to all DON commands and to all military and civilian personnel, assigned to or employed by any element of the DON, and includes cleared contractor visitors working under the purview of a commanding officer. Personnel are individually responsible for compliance. This instruction establishes the minimum standards for classifying, safeguarding, transmitting and destroying classified information as required by higher authority.

5. Roles and Responsibilities

1. The Commanding Officer (used as a generic term for the head of any DON command and includes commander, commanding general, director, officer in charge, etc.) is responsible for the effective management of the ISP within the command. Authority delegated by this instruction to a commanding officer may be further delegated unless specifically prohibited.

6. Action

1. Each DON commanding officer shall establish and conduct an ISP in compliance with this instruction and reference [SECNAV M-5510.36].

3. **SECNAV M-5510.36, DON, Information Security Program**, states:

12-2 Reporting Responsibilities

1. Commanding Officer. When a loss or compromise of classified information occurs, the cognizant commanding officer or security manager shall immediately initiate a Preliminary Inquiry (PI). If, during the conduct of the PI, it is determined that a loss or compromise of classified information did occur, the local NCIS office will be notified. The contacted NCIS office shall promptly advise whether or not it will open an investigation and provide advice and assistance to the PI as necessary. Timely referral to the NCIS is imperative to ensure preservation of evidence for any possible counterintelligence (CI) or criminal investigation.

2. Security Manager. The Security Manager shall be responsible for overseeing the PI. In the event of compromise or possible compromise on an IT system, the Security Manager shall coordinate with the IA Manager (IAM) to ensure that these incidents are properly reported in accordance with both this policy manual and reference (a). Additionally, the IAM shall ensure that the possibly compromised classified information is sanitized from the affected system(s) in accordance with reference (e) when directed to do so by the security manager or commanding officer.

12-3 Preliminary Inquiry

A PI is the initial process to determine the facts surrounding a possible loss or compromise of classified information. At the conclusion of the PI, a narrative of the PI findings will be prepared. This report will determine additional investigative or command actions. A PI is convened by the command with custodial responsibility over the lost or compromised information.

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12-4 Preliminary Inquiry Initiation

1. The commanding officer shall appoint, in writing, a command official (other than the security manager or anyone involved with the incident) to conduct a PI. This individual shall have security clearance eligibility and access commensurate to the classification level of the information involved; the ability to conduct an effective, unbiased investigation; and shall not be someone involved, either directly or indirectly, with the incident. The security manager shall provide advice and guidance, as necessary.

2. A PI shall be initiated and completed within 72 hours of initial discovery of the incident. If circumstances exist that would delay the completion of the PI within 72 hours, the next superior in the administrative chain of command, the CNO (N09N2), the originator of the information, the Original Classification Authority (OCA) of the lost or compromised information, the local NCIS office and all others required by paragraph 12-8 shall be notified of the reason for the delay and expected completion date. A pending NCIS investigation shall not delay the completion of a PI, unless the NCIS Special Agent in Charge (SAC) requests that command actions be held in abeyance in order to preserve evidence for CI or criminal investigations.

12-5 Contents of the PI Message or Letter

The PI shall completely and accurately identify the information lost or compromised. This identification shall include the information's subject or title, classification of the information (including any relevant warning notices or intelligence control markings, downgrading and declassification instructions), all identification or serial numbers, the date of the information, the originator, the OCA, the number of pages or amount of material involved, a point of contact from the command, a command telephone number, the Unit Identification Code (UIC) of the custodial command, etc. The PI shall identify the NCIS agent contacted, and also indicate whether a Judge Advocate General Manual (JAGMAN) investigation will or will not be conducted.

12-7 Actions Taken Upon PI Conclusion

1. Forward the PI by message or letter to the addressees in paragraph 12-4 if the PI concludes that a loss or compromise of classified information occurred or if a significant command security weakness or vulnerability is revealed. Loss or compromise should be assumed unless the information did not leave the control of the U.S. Government. A loss or compromise is considered "beyond the jurisdiction of the U.S. Government" if the information is, for example, transmitted over the Internet; is publicly revealed or becomes the subject of a public media compromise; or is improperly revealed to an unauthorized individual or entity over which the U.S. Government has no authority.

2. A JAGMAN investigation is required in the event that disciplinary action is being considered or recommended by the PI, or compromise of classified information is considered likely to

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have occurred. In these circumstances, the command shall immediately initiate the JAGMAN investigation (see paragraphs 12-9 and 12-10), and notify the local NCIS office and all PI addressees. If the PI concludes that a significant security weakness or vulnerability exists due to the failure of a person to comply with established security practices and/or procedures, the commanding officer shall immediately take any necessary corrective actions to prevent recurrence.

3. Do not forward the PI message or letter if the PI concludes that a loss or compromise of classified information did not occur or the possibility of compromise is remote due to the belief that the information was never outside the control of cleared U.S. Government personnel. However, if minor security weaknesses or vulnerabilities are revealed due to the failure of a person to comply with established security practices and/or procedures, the commanding officer will immediately take the necessary disciplinary and/or corrective actions to prevent recurrence.

12-9 JAGMAN Investigations

1. A JAGMAN investigation is an administrative proceeding conducted per chapter II of [JAGINST 5800.7D, Manual of the Judge Advocate General]. A JAGMAN investigation is convened by the command having custodial responsibility over the information lost or compromised. The purpose of a JAGMAN investigation is to provide a more detailed investigation and recommend disciplinary action or additional corrective action.

12-10 JAGMAN Initiation and Appointment Letter

1. The commanding officer shall appoint, in writing, an individual to conduct a JAGMAN investigation. This individual shall have security clearance eligibility and access commensurate to the classification level of the information involved; the ability to conduct an effective, unbiased investigation; and shall not be someone involved, either directly or indirectly, with the incident. The command security manager may not be appointed to conduct the JAGMAN investigation, but may provide advice and guidance to the investigating official (see exhibit 12C for a sample JAGMAN appointment letter).

2. If, during the course of the JAGMAN investigation, it is determined that a compromise did not occur, the investigation shall be terminated and all addressees required will be notified with a brief statement supporting the determination.

12-15 Security Reviews

Classified information subjected to compromise requires a security review for classification determination. If local expertise is available, a security review shall be conducted for a classification determination. If no such expertise is available, the originator or OCA of the information shall be asked for a security review. A security review, however, is usually insufficient to support formal prosecution. A local reviewer shall not declassify properly classified information, unless that person is the cognizant OCA.

C. Discussion:

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Based on a preponderance of the evidence, we determined that RADM Harley did not comply with reporting mandates specified in SECNAV M-5510.36, Information Security Program (ISP), when the PI investigating officer identified significant command security weaknesses and vulnerability in the NWC ISP. The PI report itemized multiple procedural and systemic discrepancies in the process and NWC ISP program overall, that significantly contributed to the release of potentially highly sensitive, classified information into the public domain. We determined that proper reporting to the CNO, OCA, and the Naval Criminal Investigative Service (NCIS) did not occur when the PI exceeded the 72-hour limit for completion after PI initiation, as mandated by SECNAV M-5510.36.

We determined that RADM Harley did not comply with additional SECNAV M-5510.36 reporting mandates when the NWC did not notify USSTRATCOM of this incident. During the course of the PI and NAVINSGEN investigation, multiple NWC wargaming SMEs and other witnesses were interviewed. The wargaming SMEs and other interviewed witnesses were unable to reach a consensus of the actual classification level of data that was publicly released, potentially including OCA-generated, classified data supplied by USSTRATCOM. As stated in SECNAV M-5510.36, loss or compromise should be assumed unless the information did not leave the control of the U.S. Government. A loss or compromise is considered “beyond the jurisdiction of the U.S. Government” if the information is transmitted over the Internet, and publicly revealed. The security review of the material should have included USSTRATCOM as the OCA of the original data provided to the NWC.

D. Conclusion:

(1) RADM Harley failed to comply with reporting mandates specified in SECNAV M-5510.36 requiring higher level reporting as a result of the significant command security weaknesses and vulnerabilities in the NWC ISP.

(2) RADM Harley failed to comply with reporting mandates specified in SECNAV M-5510.36 requiring higher level reporting when the PI exceeded the 72-hour time limit for completion.

E. Recommendation: We note that NAVINSGEN recently conducted a security inspection at the NWC. We recommend the NWC SSO continue to coordinate with USSTRATCOM regarding this matter.

Allegation 20: (b) (7)(C), (b) (6)
[Redacted text block]

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(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (6)
[Redacted]

[Redacted]

Allegation 21: RADM Harley wrongfully encouraged, directed, coerced, and requested a subordinate to use official time to perform activities other than those required or authorized in the performance of official duties.

A. Facts:

(1) On August 20, 2017, RADM Harley received an unconditional offer from the University of Reading, Reading, United Kingdom, to pursue a PhD in Politics, with the University of Reading. The University of Reading further informed RADM Harley that (b) (7)(C), (b) (6) was assigned as one of two research supervisors to assist RADM Harley. (Ex 107)

(2) On December 6, 2017, RADM Harley received an email Library notice from the Henry E. Eccles Library, Naval War College, informing him that a book he checked out was coming due. (Ex 135)

- On December 6, 2017, RADM Harley forwarded the Library email notice to a subordinate NWC staff member instructing: *“Please renew this book...”* (Ex 135)

(3) On February 7, 2018, RADM Harley forwarded an email entitled ‘Thesis Status’ to his PhD dissertation supervisor, (b) (7)(C), (b) (6). Attached to RADM Harley’s email to (b) (7)(C), (b) (6) were two documents, entitled: ‘Research Student Annual Report on Progress’; and ‘Summary of Progress and Reflections of Agreed Plans and Timescales.’ (Ex 136)

- On June 11, 2018, RADM Harley forwarded his February 7, 2018, email to a subordinate Naval War College (NWC) staff member instructing: *“Pls print.”* The print request equated to five pages of information. (Ex 136)

(4) On February 28, 2018, RADM Harley received an email entitled ‘Re: Thesis Draft’ from (b) (7)(C), (b) (6), with three documents attached: 1) ADMIRAL HARLEY INTRO PAPER; 2) MACKINDER AND THE EU REFERENDUM; 3) Cope article top version .2018 (Ex 137)

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- On April 20, 2018, RADM Harley forwarded his February 28, 2018 email to a subordinate NWC staff member instructing: “*Pls print.*” The print request equated to twenty-nine pages of information. (Ex 137)

(5) On September 30, 2019, RADM Harley was interviewed regarding this matter. RADM Harley was read 5 C.F.R. § 2635.705 and acknowledged that he was aware of this requirement.

(6) RADM Harley considered the allegation and stated:

For me—this is simply my role as a scholar and so asking to print something up as I perform my functions embedded in my duties as President, that’s what I would call reasonably official functions. (Ex 6:335)

- When RADM Harley was asked about the correlation between his PhD thesis and Government affiliation, RADM Harley stated:

My argument would be something like that serving as the President of the College, I have academic and scholarly requirements. I take it upon myself to pursue a PhD. I don’t print out my thesis at work but asking—since I don’t have a functioning printer, asking my—and that’s why I—it’s come in on my .edu account, is I believe that’s a function of – of my identity as the President of the College, is to continue to lifelong learning, to pursue my education. (Ex 6:336)

- RADM Harley related that his printer often malfunctioned or would not map [connect] properly, and is the reason why he did not print out the documents himself. (Ex 6:337)

- RADM Harley stated the book that he signed out of the NWC Library was in support of his paper for the McMullen Conference⁶⁸ that he was preparing to attend. (Ex 6:339)

B. Standards:

5 C.F.R. § 2635.704, Use of Government Property, states:

(a) Standard. An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

(b) Definitions. For purposes of this section:

- 1) Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

⁶⁸ The McMullen Naval History Symposium is an event hosted by the History Department, U.S. Naval Academy, Annapolis, MD.

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~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~**5 C.F.R § 2635.705 Use of official time**, states:

(b) Use of a subordinate's time. An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

C. Discussion:

1. Based on a preponderance of the evidence, we determined that RADM Harley violated 5 C.F.R. § 2635.704 and 2635.705 when, on two separate occasions, he instructed NWC staff members to print out, on official time, non-official documents related to RADM Harley's personal PhD program. This resulted in RADM Harley's subordinate expending government resources, in this case office supplies, for other than authorized purposes. RADM Harley's argument that, as President of the Naval War College, he has "academic and scholarly requirements" which transformed a purely private endeavor (his pursuit of a PhD) into an official action, is unavailing: the degree or pursuit thereof was simply not a requirement of his position as the President. A finding to the contrary would authorize personnel throughout the federal government to use official government time and resources so long as they could make some form of argument, however tenuous, linking their private endeavor to some nebulous public gain.

2. We did not determine that RADM Harley violated 5 § 2635.705 when he instructed a subordinate NWC staff member to renew a book that RADM Harley signed out of the NWC Library. RADM Harley stated the book he signed out was for preparation of a paper that he planned to present during the McMullen Conference but he was unable to attend. RADM Harley's continued use of the library book was clearly in furtherance of his preparation for the upcoming official government presentation at the Naval Academy and thus not contrary to the prohibition in 705.

D. Conclusion: That RADM Harley violated 5 C.F.R. § 2635.704 and 2635.705 when on two occasions, he instructed subordinate NWC staff members to use official time and resources to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

E. Recommendation: None

V. RADM HARLEY RESPONSE TO TENTATIVE CONCLUSIONS LETTER. (Ex 138)**Allegation 1: RADM Harley wrongfully permitted alcohol to be served and consumed on the Naval War College campus without proper authorization.**

In his response to allegation 1, RADM Harley reaffirmed his authority as a Commanding Officer (CO) per Navy regulation and that he authorized the consumption of alcohol on the NWC campus as the President, NWC. In his delegation of authority request to the CO, Naval Station Newport, RADM Harley cited U.S. Navy Regulation, Chapter 9, The Senior Officer Present, as

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the source of his authorities and as the senior officer present in the Newport area. As indicated in the ROI Standards section for allegation 1, OPNAVINST 1700.16B is clear and specifies that Commanding Officers of Navy installations shall have approval authority for activities under their cognizance, and in this case, consumption of alcoholic beverages on the installation. The NWC staff requesting authorization from the installation CO was established NWC procedure and in compliance with OPNAVINST 1700.16B. While RADM Harley did request and received standing approval to authorize serving and consuming alcohol at NWC events in December 2017, the approval from the installation CO also mandated that the NWC refer events outside of defined parameters to the installation CO for determination. Witnesses interviewed during the course of the investigation described instances in which RADM Harley authorized the use of alcohol on the NWC campus that were not associated with a defined NWC event and did not receive installation CO review and approval. RADM Harley asserted OPNAVINST 5354.4D authorized him to serve and consume alcohol as the President of the NWC during normal working hours without the base commander's approval – but the provision on which he relies limits that authority to only “official functions, ceremonies, and other infrequent command sponsored events.” The investigation includes testimony from multiples witnesses who observed RADM Harley offering alcohol to other NWC employees and consuming alcohol himself during normal working hours, unrelated to any official functions, ceremonies, or command sponsored events. Finally, the legal review RADM Harley referred to in his TCL response was provided after RADM Harley was informed of the allegations made against him; no other legal review regarding this matter was provided to NAVINSGEN during the course of the investigation. For these reasons, the allegation that RADM Harley wrongfully permitted alcohol to be served and consumed on the NWC campus without authorization, remains substantiated.

Allegation 3: RADM Harley improperly directed the use of government funds for a trip to Naples, Italy, for (b) (6), (b) (7)(C)

In his response to allegation 3, RADM Harley's assertion that the NAVEUR Commander requested an in-person briefing was not independently corroborated during the course of this investigation. Additionally, no information was developed during the course of the investigation indicating that (b) (7)(C), (b) (6) travel to Italy to personally brief ADM Foggo received an NWC ethics or legal review approving this travel. While the decision to authorize the travel was within RADM Harley's authority to make, the justification offered by RADM Harley does not meet the spirit and intent of the JTR, which mandates authorizing or approving only the travel necessary to accomplish the Government's mission effectively and economically. The JTR further mandates that alternate means of conducting business, such as telephone calls, video teleconferencing, etc, be utilized, and that travel is required when alternate means of conducting business are either unavailable or cannot meet the mission's needs. In his response to the TCL, RADM Harley offered that he believed that the flow of the conversation [could] not be as useful over VTC as in person. To date, no explanation has been offered detailing how a telephone call or video teleconferencing would have negatively affected or impeded the needs of the mission or mission effectiveness (providing unclassified information to ADM Foggo). RADM Harley's assertion that (b) (7)(C), (b) (6) would have been entitled to an “honorarium” payment of up to \$2,000 if the briefing were held via VTC at the NWC is incorrect. Paragraph A.2. of Section 030501 of the JTR, in conjunction with Chapter 12, Volume 10 of DoD 7000.14-R (FMR), authorize the payment of fees (honorarium) for guest speakers, lecturers, or panelists. But (b) (7)(C), (b) (6) trip to

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Naples representing the NWC to ADM Foggo constituted his conferring on an official DoD matter with DoD officials, thereby providing advice or guidance to DoD in accordance with paragraph A.3. of Section 030501 of the JTR. In sum, given all the facts, to include affording deference to a commander's inherent discretion, we determined it was not objectively reasonable for RADM Harley to approve the expenditure of over \$3,000 for a one hour briefing when an alternate means, specifically VTC or conference call, could meet the mission's needs. For these reasons, the allegation that RADM Harley inappropriately directed the use of government funds for ~~(b) (6), (b) (7)(C)~~ to provide an in-person briefing to ADM Foggo in Italy, remains substantiated.

Allegation 7: RADM Harley improperly endorsed the Naval War College Foundation and improperly encouraged NWC students to become members of the NWCF.

Regarding allegation 7, RADM Harley stated that he worked with his legal advisors to ensure he did not cross ethical lines when discussing the NWCF with NWC students. RADM Harley did receive advice from legal counsel specifying that publicly thanking the NWCF for gifts received was authorized, but that encouraging membership drives or fundraising was prohibited. Information developed during the investigation revealed that RADM Harley did not request a legal review prior to sending his personal email to the NWC student body on March 5, 2018. Further, RADM Harley's assertion in his response to the TCL that "the subsequent legal review approved the email [sent by RADM Harley on March 5, 2018 and the subject of this allegation]" is contradicted by other evidence gathered during the investigation. In fact, the legal opinion to which RADM Harley refers specifically advised him that his email to the NWC students could be construed as an endorsement by him of the NWCF. In response to this legal advice, RADM Harley stated that he was willing to accept the risk and that he did not believe his email was an endorsement of the NWCF. For these reasons, the allegation that RADM Harley improperly endorsed the NWCF and improperly encouraged NWC students to become NWCF members, remains substantiated.

Allegation 16: RADM Harley improperly used a non-government email account to conduct official Government business.

In his rebuttal to the findings regarding allegation 16, RADM Harley reaffirmed that he has used his personal email account to conduct official government business, further asserting that these were on rare and under extraordinary circumstances as specified in the DepSecDef Memo, dated January 16, 2018. While the DepSecDef Memo is clear that personal email accounts must not be used to conduct official DoD communications, but can be used in rare and extraordinary situations, that memo further mandates that the use of personal email accounts in these "rare and extraordinary" circumstances is authorized only when an official email capability is not available and the contents of the communication are required because of an "urgent DoD mission related" circumstance. No information was developed or provided during the course of the investigation indicating that in the fifteen instances (three actual email instances provided to RADM Harley and a total of twelve other instances which were admitted to by RADM Harley during his interview) when RADM Harley used his personal AOL account for official government business, that his government email was unavailable at the time or that any of the subject matter in the emails was of such an urgent DoD mission related nature or circumstance that his immediate response via his personal AOL email account was required. For these reasons, the

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allegation that RADM Harley committed technical violations when he improperly used a personal email account to conduct official Government business, remains substantiated.

Allegation 18: RADM Harley improperly allowed (b) (7)(C), (b) (6) to remain in a national security position after RADM Harley was notified of the DoD CAF decision to deny or revoke (b) (7)(C), (b) (6) eligibility for access to classified information, and/or assignment to duties designated as national security sensitive, and/or access to Sensitive Compartmented Information (SCI).

Regarding allegation 18, RADM Harley's belief that he retained authority to make the decision to allow (b) (7)(C), (b) (6) to remain in a national security sensitive position, despite the DoDCAF mandate to remove (b) (7)(C), (b) (6) from duties designated as national security sensitive, was in error. Further, RADM Harley's belief that (b) (7)(C), (b) (6) could remain in his national security position while the NWC pursued a DUSNP waiver was also in error and further violated DoDCAF and DoDI 5200 removal mandates as a result of (b) (7)(C), (b) (6) receiving an unfavorable personnel security determination from DoDCAF. The decision as to whether (b) (7)(C), (b) (6) could remain in his national security sensitive position after receiving the DoD CAF unfavorable personnel security determination pending an approved waiver was never delegated to RADM Harley. For these reasons, the allegation that RADM Harley improperly allowed an NWC Professor to remain in a national security position after the DoDCAF denied or revoked the Professor's assignment to duties designated national security sensitive, remains substantiated.

Allegation 19: RADM Harley failed to report a potential compromise of sensitive/classified information incorporated into an unclassified and publicly released dissertation.

In his response to allegation 19, RADM Harley stated that an investigating officer was appointed to review all of the facts regarding this matter because a compromise of classified information was possible. RADM Harley related that he and several members of the leadership team reviewed the PI report and arrived at the same conclusion that no classified information had been compromised. In our review of the PI report, however, we found the investigator only determined that no SCI information was compromised but did not further address whether sensitive information at a lower classification level had been released. The PI report further stated that an unauthorized disclosure of at least FOUO, and possibly up to SECRET could have occurred for a number of reasons. The PI report further characterized the information as "data of questionable classification markings" and that there was not a consensus amongst the NWC subject matter experts interviewed regarding the actual classification of the material publicly released. Per SECNAV M-5510.36, section 12-15, Security Reviews, classified information subjected to compromise requires a security review for classification determination. The originator or OCA of the information shall be asked for a security review if local expertise is not available to conduct the review for classification determination. Such clarification from the OCA was not sought in this situation as required. For these reasons, the allegation that RADM Harley failed to report the potential compromise of sensitive/classified information incorporated into an unclassified and publicly released dissertation, remains substantiated.

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Allegation 21: RADM Harley wrongfully encouraged, directed, coerced, and requested a subordinate to use official time to perform activities other than those required or authorized in the performance of official duties.

Regarding allegation 21, RADM Harley offered that his request to his subordinates to print out documents associated with his personal pursuit of a doctoral degree was a part of his scholarly responsibilities as PNWC and consistent with official duties. No information was developed or provided during the course of this investigation indicating that RADM Harley’s personal pursuit of a doctoral degree was a component or requirement of his official responsibilities as President, Naval War College. For these reasons, the allegation that RADM Harley directed a subordinate to use official time to perform activities other than those required or authorized in the performance of official duties, remains substantiated.

Conclusion:

We carefully considered RADM Harley’s comments regarding our preliminary conclusions, re-examined the evidence, and addressed RADM Harley’s comments in this section and in part, throughout the report. As such, RADM Harley’s response to the TCL did not change the conclusions of the investigation. We conclude that the seven allegations are substantiated.

VI. LIST OF EXHIBITS

Exhibit 1 Authorizations to Serve Alcohol at NWC; October 2016 – December 2017

Exhibit 2 Request and Approval to Serve Alcohol at NWC; November 13, 2017

Exhibit 3 Standing Approval to Serve Alcohol at NWC; December 27, 2017

Exhibit 4 (b) (6), (b) (7)(C)

Exhibit 5 (b) (7)(C), (b) (6)

Exhibit 6 (b) (7)(C), (b) (6)

Exhibit 7 (b) (6), (b) (7)(C)

Exhibit 8 (b) (7)(C), (b) (6)

Exhibit 9 (b) (7)(C), (b) (6)

Exhibit 10 (b) (7)(C), (b) (6)

Exhibit 11 (b) (7)(C), (b) (6)

Exhibit 12 (b) (7)(C), (b) (6)

Exhibit 13 RADM Harley Official Statement; October 4, 2019

Exhibit 14 (b) (7)(C), (b) (6) Legal Opinion Alcohol Consumption; May 9, 2018

Exhibit 15 (b) (7)(C), (b) (6)

Exhibit 16 (b) (7)(C), (b) (6)

Exhibit 17 (b) (7)(C), (b) (6)

Exhibit 18 (b) (7)(C), (b) (6)

Exhibit 19 (b) (7)(C), (b) (6)

Exhibit 20 (b) (7)(C), (b) (6)

Exhibit 21 (b) (6), (b) (7)(C) email to RADM Harley BTM 2; May 29, 2018

Exhibit 22 (b) (7)(C), (b) (6)

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- Exhibit 23 (b) (7)(C), (b) (6)
- Exhibit 24 Mission Essential Travel Request (METR) (b) (6), (b) (7)(C)
- Exhibit 25 (b) (7)(C), (b) (6) Travel Dates Email; October 15, 2017
- Exhibit 26 RADM Harley appointment of (b) (7)(C), (b) (6); October 20, 2017
- Exhibit 27 RMSI TTX Email to RADM Harley; October 30, 2017
- Exhibit 28 NWC Senior Faculty email to RADM Harley (b) (7)(C), (b) (6) trip to Naples; Nov 29, 2017
- Exhibit 29 NWC Staff and NAVEUR Staff email—(b) (7)(C), (b) (6) trip to Naples; December 4, 2017
- Exhibit 30 NWC General Counsel Analysis—(b) (7)(C), (b) (6) trip to Naples; December 8, 2017
- Exhibit 31 (b) (7)(C), (b) (6) Travel Voucher; December 2017
- Exhibit 32 (b) (6), (b) (7)(C)
- Exhibit 33 ADM Foggo Email Interrogatory; October 8, 2019
- Exhibit 34 (b) (7)(C), (b) (6)
- Exhibit 35 (b) (7)(C), (b) (6)
- Exhibit 36 (b) (7)(C), (b) (6)
- Exhibit 37 (b) (7)(C), (b) (6)
- Exhibit 38 (b) (7)(C), (b) (6)
- Exhibit 39 (b) (7)(C), (b) (6)
- Exhibit 40 (b) (7)(C), (b) (6)
- Exhibit 41 (b) (6), (b) (7)(C)
- Exhibit 42 (b) (7)(C), (b) (6)
- Exhibit 43 (b) (7)(C), (b) (6)
- Exhibit 44 PNWC Directive for CISO Position; March 19, 2018
- Exhibit 45 (b) (7)(C), (b) (6)
- Exhibit 46 (b) (7)(C), (b) (6)
- Exhibit 47 (b) (7)(C), (b) (6)
- Exhibit 48 (b) (7)(C), (b) (6)
- Exhibit 49 (b) (6), (b) (7)(C)
- Exhibit 50 (b) (7)(C), (b) (6)
- Exhibit 51 (b) (7)(C), (b) (6)
- Exhibit 52 (b) (7)(C), (b) (6)
- Exhibit 53 (b) (7)(C), (b) (6)
- Exhibit 54 RADM Harley Email to NWC—NWCF; March 5, 2018
- Exhibit 55 (b) (7)(C), (b) (6) Email Interrogatory; July 1, 2019
- Exhibit 56 (b) (6), (b) (7)(C)
- Exhibit 57 (b) (7)(C), (b) (6)
- Exhibit 58 (b) (7)(C), (b) (6)
- Exhibit 59 (b) (7)(C), (b) (6)
- Exhibit 60 (b) (7)(C), (b) (6)
- Exhibit 61 (b) (7)(C), (b) (6) Gift Offer; November 1, 2016
- Exhibit 62 (b) (7)(C), (b) (6)
- Exhibit 63 NWC Provost Gift Acceptance; November 3, 2016
- Exhibit 64 (b) (7)(C), (b) (6)

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- Exhibit 65 (b) (7)(C), (b) (6)
- Exhibit 66 (b) (7)(C), (b) (6)
- Exhibit 67 (b) (7)(C), (b) (6)
- Exhibit 68 (b) (7)(C), (b) (6)
- Exhibit 69 (b) (7)(C), (b) (6) Email Interrogatory; September 26, 2019
- Exhibit 70 NWC Memorandum of Understanding—(b) (7)(C), (b) (6); December 19, 2018
- Exhibit 71 RADM Harley HR Decisions Email; March 19, 2018
- Exhibit 72 OPM SF 52-B for (b) (7)(C), (b) (6) January 6, 2019
- Exhibit 73 RADM Harley ‘NWC All’ Faculty Appts Email; January 9, 2019
- Exhibit 74 (b) (7)(C), (b) (6)
- Exhibit 75 (b) (7)(C), (b) (6)
- Exhibit 76 (b) (7)(C), (b) (6) Consideration Request Email; October 30, 2018
- Exhibit 77 (b) (7)(C), (b) (6)
- Exhibit 78 (b) (7)(C), (b) (6)
- Exhibit 79 (b) (7)(C), (b) (6)
- Exhibit 80 (b) (7)(C), (b) (6)
- Exhibit 81 (b) (7)(C), (b) (6)
- Exhibit 82 (b) (7)(C), (b) (6)
- Exhibit 83 (b) (7)(C), (b) (6)
- Exhibit 84 (b) (7)(C), (b) (6)
- Exhibit 85 (b) (7)(C), (b) (6)
- Exhibit 86 (b) (6), (b) (7)(C)
- Exhibit 87 (b) (7)(C), (b) (6)
- Exhibit 88 (b) (7)(C), (b) (6)
- Exhibit 89 (b) (7)(C), (b) (6)
- Exhibit 90 (b) (7)(C), (b) (6)
- Exhibit 91 (b) (6), (b) (7)(C)
- Exhibit 92 (b) (7)(C), (b) (6)
- Exhibit 93 (b) (7)(C), (b) (6)
- Exhibit 94 (b) (7)(C), (b) (6)
- Exhibit 95 (b) (7)(C), (b) (6)
- Exhibit 96 (b) (7)(C), (b) (6)
- Exhibit 97 (b) (7)(C), (b) (6)
- Exhibit 98 (b) (7)(C), (b) (6)
- Exhibit 99 (b) (7)(C), (b) (6)
- Exhibit 100 (b) (7)(C), (b) (6)
- Exhibit 101 NWC Waiver Request: (b) (7)(C), (b) (6); July 28, 2017
- Exhibit 102 (b) (6), (b) (7)(C)
- Exhibit 103 (b) (6), (b) (7)(C)
- Exhibit 104 PNWC Response to (b) (7)(C), (b) (6) ‘Proposed lectures series’ Email; Feb 19, 2017
- Exhibit 105 PNWC Response to (b) (7)(C), (b) (6) ‘Chat’ email; March 16, 2019
- Exhibit 106 PNWC Response to (b) (7)(C), (b) (6) ‘Breaking the Mold 3’ email; April 3, 2019

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- Exhibit 107 University of Reading Acceptance Email—RADM Harley; August 20, 2017
- Exhibit 108 (b) (7)(C), (b) (6)
- Exhibit 109 (b) (7)(C), (b) (6)
- Exhibit 110 (b) (7)(C), (b) (6)
- Exhibit 111 (b) (7)(C), (b) (6)
- Exhibit 112 (b) (7)(C), (b) (6)
- Exhibit 113 (b) (7)(C), (b) (6)
- Exhibit 114 (b) (7)(C), (b) (6)
- Exhibit 115 DoD CAF Notification to NWC Special Security Office; September 6, 2017
- Exhibit 116 RADM Harley Letter to DON CAF regarding DoD CAF notification; Nov 3, 2017
- Exhibit 117 DoD CAF Deny/Revocation Notification; November 13, 2017
- Exhibit 118 DON PSAB Notification Upholding DoD CAF Deny/Revocation; Sept 14, 2018
- Exhibit 119 RADM Harley Request for Waiver to DUSNP; May 21, 2019
- Exhibit 120 NWC Restriction of (b) (7)(C), (b) (6) to 'Visitor Only'; June 24, 2019
- Exhibit 121 NWC Withdrawal of NWC Waiver Request to DUSNP; July 23, 2019
- Exhibit 122 (b) (6), (b) (7)(C)
- Exhibit 123 (b) (7)(C), (b) (6) Email Interrogatory; June 20, 2019
- Exhibit 124 RADM Harley Interview Transcript; October 1, 2019
- Exhibit 125 (b) (6), (b) (7)(C)
- Exhibit 126 NWC Preliminary Inquiry Report; August 13, 2018
- Exhibit 127 Draft NWC MFR Post Investigation; May 17, 2019
- Exhibit 128 Signed NWC MFR Post Investigation; May 28, 2019
- Exhibit 129 (b) (6), (b) (7)(C)
- Exhibit 130 (b) (6), (b) (7)(C)
- Exhibit 131 (b) (6), (b) (7)(C)
- Exhibit 132 (b) (7)(C), (b) (6)
- Exhibit 133 (b) (7)(C), (b) (6)
- Exhibit 134 (b) (7)(C), (b) (6)
- Exhibit 135 RADM Harley received NWC Library Notification; August 20, 2017
- Exhibit 136 RADM Harley 'Thesis Status' email to NWC Staff Member; June 11, 2018
- Exhibit 137 RADM Harley 'Re: Thesis Draft' email to NWC Staff Member; April 20, 2018
- Exhibit 138 RADM Harley's responses to the NAVINSGEN TCL, December 31, 2019

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