

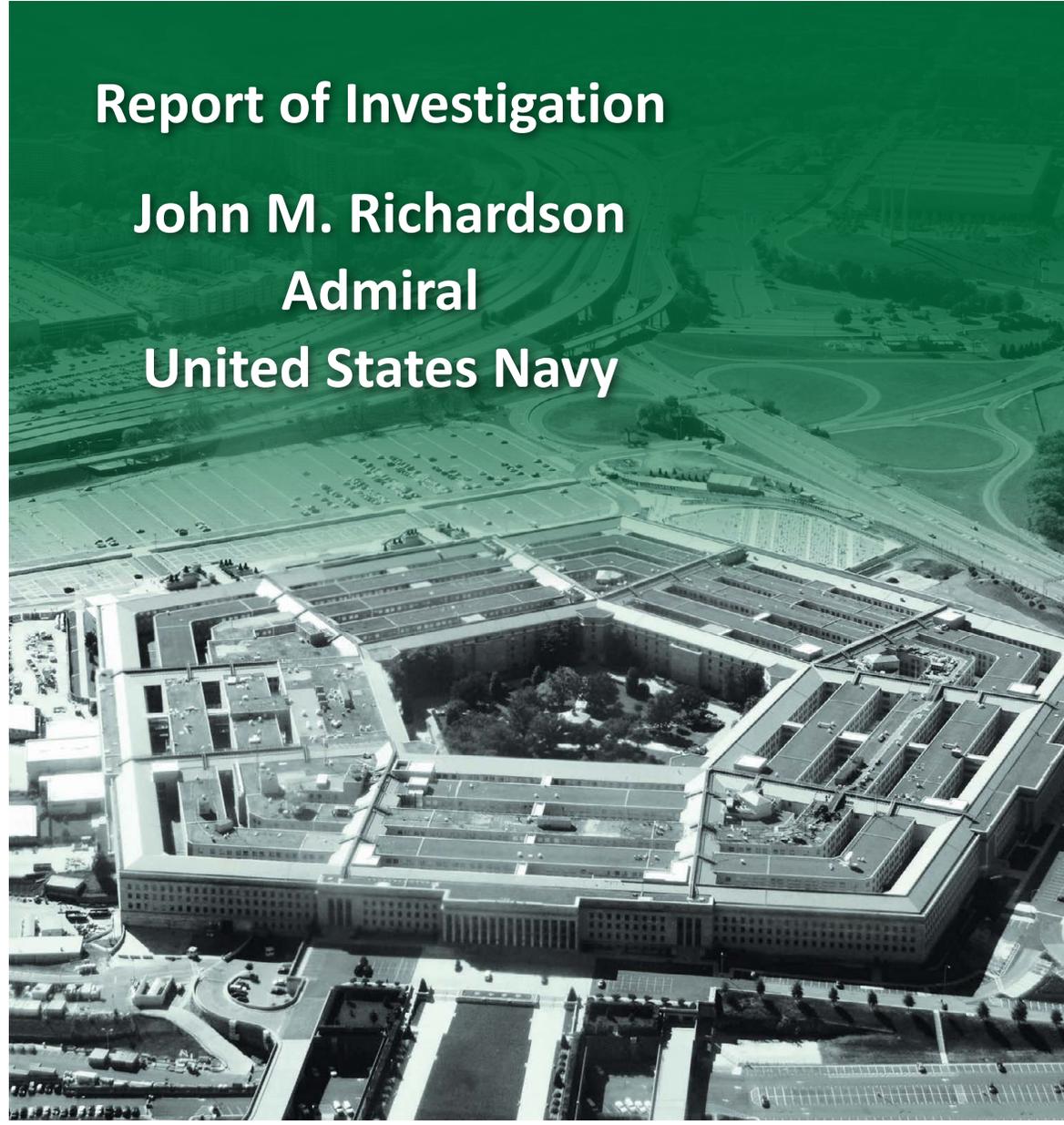
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Investigations of Senior Officials

INSPECTOR GENERAL

*U.S. Department of Defense*

OCTOBER 10, 2018



## Report of Investigation

**John M. Richardson**

**Admiral**

**United States Navy**

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE

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**REPORT OF INVESTIGATION:  
ADMIRAL JOHN M. RICHARDSON  
U.S. NAVY**

**I. INTRODUCTION AND SUMMARY**

*Complaint Origin and Allegation*

U.S. Senator Kirsten E. Gillibrand requested that the DoD Office of Inspector General (DoD OIG) conduct an assessment of senior Navy leadership's response to allegations of sexual harassment and sexual assault by the Navy public affairs officer (PAO), a member of the Chief of Naval Operations' personal staff, in December 2016.<sup>1</sup> Senator Gillibrand questioned Navy leadership's lack of immediate action to remove the PAO. Specifically, Senator Gillibrand asked the DoD OIG to open an investigation to determine "who knew what, when, and why no action was taken to remove the alleged offender (even temporarily) from such an important, public position."

On December 21, 2017, we initiated this investigation, which assessed Admiral (ADM) John M. Richardson's response to sexual harassment and sexual assault allegations against the PAO.

*Scope and Methodology of the Investigation*

During our investigation, we interviewed 17 witnesses.<sup>2</sup> Witnesses we interviewed included:

- Chief of Naval Operations (CNO), ADM Richardson;
- Vice Chief of Naval Operations (VCNO), ADM William F. Moran;
- former Director, Navy Staff (DNS), ADM James G. Foggo;
- former Navy Chief of Information (CHINFO), Rear Admiral (RDML) Dawn E. Cutler; and
- the alleged victims of the PAO's conduct.

We also reviewed more than 25,000 official e-mails, the Office of the Chief of Naval Operations (OPNAV) staff's preliminary inquiry into the PAO's conduct, and three U.S. Naval Criminal Investigative Service (NCIS) reports of investigation involving the PAO.<sup>3</sup> We reviewed ADM Richardson's official calendar, the Navy's daily media tracker, legal documents addressing the PAO's actions and proposed courses of action Navy leadership could take, and multiple administrative documents relating to the PAO's conduct and eventual reassignment. We also visited the daily workspaces of the alleged victims and the PAO, and the offices of ADM Richardson, ADM Moran, and ADM Foggo, all located in the Pentagon, to understand the physical locations and proximity of the alleged victims to the PAO before his reassignment.

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<sup>1</sup> Unless otherwise indicated, we refer to the Chief of Naval Operation's Public Affairs Officer as "the PAO" throughout this report.

<sup>2</sup> We contacted the PAO to schedule an interview. He declined our request and told us that he did so based upon advice of counsel.

<sup>3</sup> The staff of the CNO, commonly referred to as OPNAV, consists of the high-ranking officers and their staffs who support the CNO, including the VCNO, the DNS, and the Deputy Chiefs of Naval Operations.

### Conclusions

We summarize in this section key facts and our conclusions regarding this case.

First, to provide context, Table 1 lists each allegation involving the PAO discussed in this report.

**Table 1. Summary of Allegations Involving the PAO**

Date Allegation Reported	Source of Allegation	Summary of Allegation
December 14, 2016	Complainant 1	Allegedly, according to Complainant 1, after a group dinner at a restaurant following the December 2016 CHINFO Christmas party, the PAO called Complainant 1, a Navy officer junior to the PAO assigned to CHINFO, six times and sent her two text messages in a 40 minute timeframe. The text messages stated, "Hey just want to make sure you ok...this is [the PAO]" and "We are leaving ... you want company?"
December 21, 2016	Complainant 2	Allegedly, according to Complainant 2, in a bar after a one-on-one dinner in Baltimore in 2014, the PAO touched the thigh of Complainant 2, a Navy officer junior to the PAO, put his arm around her shoulder, and asked her if he could come up to her room and "make out" with her. In addition, at the December 2016 CHINFO Christmas party, while dressed as Santa Claus, the PAO gave Complainant 2, at the time assigned to CHINFO, two "uncomfortably long" hugs.
December 29, 2016	The PAO	Allegedly, according to the PAO, at the dinner following the December 2016 CHINFO Christmas party, [REDACTED] According to the PAO, Complainant 1 [REDACTED] at the dinner.
February 15, 2017	Complainant 3	Allegedly, according to Complainant 3, during the December 2016 CHINFO Christmas party, while dressed as Santa Claus, the PAO slapped Complainant 3, a Navy employee assigned to CHINFO, on the buttocks.

As discussed in this report, Navy leadership took action to investigate the matter when they first learned of the December 14, 2016, allegation against the PAO. On December 15, 2016, the Navy appointed an investigating officer (IO) to conduct a preliminary inquiry into Complainant 1's allegation related to the 2016 CHINFO Christmas party and the PAO's contacts with her afterwards.

On December 16, 2016, a Navy official ordered the PAO to stay away from Complainant 1 and her workplace.

When Complainant 2 learned of Complainant 1's allegations during the preliminary inquiry, Complainant 2 alleged to the IO that after a one-on-one dinner in Baltimore in 2014, the PAO had touched her thigh, put his arm around her shoulder, and asked her if he could come up to her room and "make out." In addition, Complainant 2 stated that the PAO gave her two "uncomfortably long" hugs at the 2016 CHINFO Christmas party.

On December 21, 2016, the IO completed the preliminary inquiry into the allegations made by Complainants 1 and 2. The IO concluded that the PAO's actions towards the Complainants did not rise

to the “level of criminal sexual harassment,” but that the PAO “consistently failed to demonstrate the maturity or judgment that would be expected of an officer in his position.” Additionally, while the IO recommended that [REDACTED] he also recommended that [REDACTED]

The IO also wrote that the PAO [REDACTED]

On December 29, 2016, the PAO made an allegation against Complainant 1, [REDACTED] during the dinner after the CHINFO Christmas party.

On January 4, 2017, ADM Foggo referred the preliminary inquiry to the Naval Criminal Investigative Service (NCIS). NCIS investigated all of the allegations, including the allegations from the PAO against Complainant 1. NCIS also investigated an allegation from Complainant 3, who alleged that at the December 2016 CHINFO Christmas party, while dressed as Santa Claus, the PAO slapped Complainant 3 on the buttocks. This became known as the “Bad Santa” incident.

On March 16, 2017, NCIS referred its reports of investigation, which described the facts found by NCIS, to the Navy Regional Legal Service Office (RLSO) for a legal review.

On March 24, 2017, a Navy official ordered the PAO to stay away from Complainant 2 and her workplace.

On April 7, 2017, the RLSO submitted the results of its legal review, which recommended [REDACTED]

The legal review concluded that [REDACTED]

Regarding the allegation by the PAO against Complainant 1, the legal review [REDACTED] The prosecutorial review stated, [REDACTED] In addition to Complainant 1’s denials of the PAO’s allegation and the lack of corroborating evidence for the PAO’s allegation, the PAO stated in the NCIS investigation that he did not believe that he was a sexual assault victim.

On April 26, 2017, ADM Richardson reviewed the RLSO recommendations and decided to take administrative action against the PAO. ADM Richardson decided to remove the PAO, give him an adverse fitness report, and issue him a non-punitive letter of caution (NPLOC).

However, the removal and reassignment did not occur for 4 months, and the PAO remained in his position during this time, providing public affairs support to the CNO.

On August 18, 2017, 4 months after his initial decision to remove the PAO, ADM Richardson directed the immediate removal of the PAO from his staff and the PAO departed, ending his tenure as ADM Richardson’s PAO.

We determined that Navy leadership took action to investigate the allegations during the initial period after learning of the first allegation against the PAO. Considering the separate investigations and the orders directing the PAO to stay away from Complainants 1 and 2, we concluded that the Navy leadership's initial actions from December 15, 2016, through April 26, 2017, to investigate the PAO's alleged misconduct and to determine legally-supportable courses of action were appropriate and expeditious.

However, we concluded that after the investigations and legal reviews were completed, and ADM Richardson made his April 26, 2017, decision to remove the PAO from his position, ADM Richardson did not take sufficient action to ensure that his decision was implemented in a timely manner.

When interviewed in our investigation, ADM Richardson acknowledged that the actions he took after his April 26, 2017, decision to reassign the PAO were not "sufficiently expeditious." ADM Richardson had full authority to remove the PAO from his personal staff at any time. The RLSO recommended [REDACTED] and ADM Richardson decided to reassign the PAO, give him an adverse fitness report, and issue him a NPLOC in April 2017. However, 2 months elapsed before ADM Richardson issued the PAO an adverse fitness report and a NPLOC on June 21, 2017. The PAO remained in place during this time. Then, another 2 months elapsed before ADM Richardson directed the immediate removal of the PAO from his staff on August 18, 2017. ADM Richardson told us that he "could have done that faster."<sup>4</sup>

We believe that ADM Richardson's failure to ensure that the PAO was removed from his personal staff in a sufficiently expeditious manner – for 4 months after he decided to reassign the PAO and take administrative action against him – sent the wrong message about how seriously ADM Richardson took the allegations of sexual harassment. ADM Richardson acknowledged that he should have acted more expeditiously. We agree. We concluded that the reassignment could have, and should have, been done closer in time to ADM Richardson's decision to take administrative action to address the allegations against the PAO.

However, we do not conclude that ADM Richardson committed misconduct by his actions or inaction. We found no applicable standard that required ADM Richardson to remove the PAO from his staff position immediately, or to reassign him to other duties within any specified time period after learning of complaints against him or investigations into his conduct.

We considered ADM Richardson's failure to ensure that the PAO was removed from his position in a timely way to be a performance issue, rather than misconduct.

Finally, we note that as a result of the issues raised during the investigation, the Navy has implemented a new policy that personal staff officers who are the subject of an investigation "should be reassigned temporarily outside the personal staff pending completion of the investigation."

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<sup>4</sup> After the PAO's reassignment on August 18, 2017, ADM Richardson's deputy PAO carried out the PAO's duties over the next three months, until a permanent replacement arrived in October 2017.

With regard to this matter, we make two recommendations. First, we recommend that the Secretary of the Navy evaluate ADM Richardson's performance related to the events in this report.

Second, although the Navy implemented a new policy on the reassignment of a personal staff officer who becomes the subject of an investigation, the revised standard does not include a timeliness standard. We recommend that the Navy add a timeliness standard for the reassignment decision and the implementation of that decision.

### **Admiral Richardson's Response to Our Tentative Conclusions Letter**

Consistent with our normal process, on August 9, 2018, we provided ADM Richardson our tentative conclusions and an opportunity to comment before we issued our final report. On August 20, 2018, ADM Richardson, through his assigned counsel, provided us with a response to our preliminary conclusions. The following is ADM Richardson's response in its entirety:

I received your draft report of investigation and your tentative conclusions, reference (a). I welcome the level of scrutiny shown by your investigation as it is appropriate to the Office of the Chief of Naval Operations, an office which must enjoy the public trust. I have learned a great deal from this incident and will use these lessons going forward.

The following sections of this report present our findings and conclusions in more detail, and the evidence on which they are based.<sup>5</sup>

## **II. BACKGROUND**

### *Admiral Richardson*

On September 18, 2015, ADM Richardson became the 31st CNO.<sup>6</sup> The CNO is the senior military officer in the Navy. The CNO is a four-star admiral and is responsible to the Secretary of the Navy for the command, utilization of resources, and operating efficiency of the operating forces of the Navy and of the Navy shore activities.

Throughout his career, ADM Richardson served in various leadership positions on several attack and ballistic missile submarines and served as the Commander, Naval Submarine Forces. He also served in various staff positions, including the Naval Aide to the President and the Director of Naval Reactors.

### *U.S. Navy Chief of Information*

The U.S. Navy Chief of Information (CHINFO) serves as the direct public affairs representative for the Secretary of the Navy and the CNO. The CHINFO is responsible for planning and executing all

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<sup>5</sup> We based our conclusions on a preponderance of the evidence, consistent with our normal process in administrative investigations.

<sup>6</sup> ADM Richardson is a 1982 graduate of the U.S. Naval Academy with an undergraduate degree in Physics. He holds a master's degree in electrical engineering from the Massachusetts Institute of Technology and Woods Hole Oceanographic Institution, and a master's degree in National Security Strategy from the National War College.

Department of the Navy (DON) public affairs missions. Depending on the context, the acronym CHINFO can refer to the individual in charge of the Navy’s public affairs community, typically a rear admiral, or to the PAO organization that is located in the Pentagon that supports the rest of the OPNAV staff. The PAO on the CNO’s personal staff provides public affairs support directly to the CNO, and is not assigned to the CHINFO organization.<sup>7</sup>

#### *U.S. Navy Judge Advocate General’s Corps Legal Support*

During the events addressed in this report, ADM Richardson, ADM Moran, and ADM Foggo each had a military attorney from the Navy Judge Advocate General’s Corps assigned to their personal staff. The military attorney assigned to ADM Richardson was a captain with over 26 years of legal experience. The military attorney assigned to ADM Moran was a captain with over 18 years of legal experience. The military attorney assigned to ADM Foggo was a commander with over 11 years of legal experience. They collaborated frequently to address legal issues and policy ramifications during the course of the events addressed in this report. The three military attorneys told us that their familiarity with processing sexual assault or sexual harassment cases ranged from being “comfortable” with such issues to having “dealt closely with sexual assault and sexual harassment issues.”<sup>8</sup>

### III. ANALYSIS OF THE ALLEGATION

#### *Chronology of Significant Events*

Table 2 lists a chronology of significant events related to this investigation.

*Table 2. Chronology of Significant Events*

Date	Event	Reassignment actions
<b>2016</b>		
Dec. 13	The U.S. Navy Chief of Information (CHINFO) Christmas party occurs from approximately 11:00 a.m. to 6:00 p.m., in the CHINFO workspace, Pentagon, Arlington, Virginia. The PAO dresses as Santa Clause at the party. The dinner afterwards starts at approximately 6:30 p.m. and ends at approximately 8:00 p.m., at the Epic restaurant, Crystal City, Arlington, Virginia.	
Dec. 14	Complainant 1 informs her supervisor that she is “pretty upset” after receiving six phone calls and two texts from the PAO after the dinner following the CHINFO Christmas party. The supervisor reports the allegations to the DNS attorney who reports the allegation to the DNS.*	

<sup>7</sup> During the events addressed in this report, the CNO’s PAO, facilitated contacts with the media, responded to media queries for the CNO, and managed the CNO’s Twitter, Instagram, and Facebook online social media accounts. The PAO also prepared the CNO for interviews with media, congressional testimony, and assisted with preparing the CNO’s strategic messages concerning current and future U.S. Navy operations for sailors, their families, and the public.

<sup>8</sup> We refer to them as the DNS attorney, the VCNO attorney, and the CNO attorney throughout this report.

Dec. 15	The DNS appoints an IO to conduct a preliminary inquiry into the “facts and circumstances surrounding allegations of sexual harassment” against the PAO based on the concerns raised by Complainant 1 (the unwanted six phone calls and two text messages).	
Dec. 16	The Deputy CHINFO orders the PAO to stay away from Complainant 1 and Complainant 1’s workspace	
Dec. 21	<p>Complainant 2 tells the IO that at a bar after a one-on-one dinner in Baltimore in 2104, the PAO had touched her thigh, put his arm around her shoulder, and asked her if he could come up to her room and “make out.” In addition, Complainant 2 states that the PAO gave her two “uncomfortably long” hugs at the 2016 CHINFO Christmas party.</p> <p>The PAO refuses to provide a statement to the IO.</p> <p>The IO identifies three potential sexual harassment incidents involving the PAO (the PAO phone calls and texts with Complainant 1 after the dinner following the CHINFO Christmas party, the 2014 incident in Baltimore with Complainant 2, and the uncomfortable hugs at the Christmas party with Complainant 2.)</p>	<p>The IO concludes that the PAO’s actions did not rise “to the level of criminal sexual harassment.” However, the IO report states that the PAO “consistently failed to demonstrate the maturity or judgment that would be expected of an officer in his position.” The IO recommends that [REDACTED] but that [REDACTED]</p>
Dec. 29	The PAO provides a statement to the IO and alleges that the PAO was a sexual assault victim with Complainant 1 as the subject.	
<b>2017</b>		
Jan. 4	DNS refers the matter to NCIS for a criminal investigation of suspected sexual misconduct.	
Jan. 5	NCIS initiates two investigations: one with the PAO as the subject (Case 1), and one with the PAO as an alleged victim (Case 2).	
Jan. 9	Military attorneys present three courses of action to the CNO regarding the PAO’s duty location while NCIS investigates the allegations: (1) leave the PAO in place, (2) temporarily reassign the PAO, or (3) transfer the PAO.	The CNO decides to keep the PAO on staff pending outcome of the NCIS investigations.
Jan. 18		The Senior PAO detailer located in Millington, Tennessee, responsible for public affairs officer assignments, provides the CHINFO with multiple immediate and permanent PAO replacement options for the CNO’s PAO.
Feb. 15	Complainant 3 contacts the NCIS agent conducting the NCIS investigations and reports that the PAO, while dressed as Santa Claus, “slapped her on the buttocks” during the CHINFO Christmas party in December 2016. However, she tells the NCIS agent	

	that she does not want to be part of the investigation or provide a further statement.	
March 10	NCIS initiates third investigation (Case 3) based on Complainant 3's allegation that the PAO "slapped her on the buttocks" at the 2016 CHINFO Christmas party.	
March 16	NCIS closes Case 3 after Complainant 3 signs a statement indicating she did not want to make a statement. NCIS refers reports of investigation describing the facts NCIS had developed in Cases 1, 2, and 3 to the RLSO for legal review.	
March 24	The legal counsel representing Complainant 2 asks the DNS attorney for a military protective order (MPO) against the PAO.	
March 27	ADM Foggo's executive assistant issues a MPO against the PAO.	
Apr. 7	The RLSO opines that [REDACTED] [REDACTED] However, the RLSO also states, [REDACTED] [REDACTED] The RLSO recommends [REDACTED] [REDACTED]	
Apr. 26	The CNO reviews the RLSO recommendations and decides to take administrative action against the PAO. The CNO decides to reassign the PAO, give him an adverse fitness report, and issue him a NPLOC.	CNO and VCNO meet with the CHINFO. The CHINFO provides list of multiple short-term and permanent PAO replacement options for the PAO.
Apr. 27 – June 6		CNO interviews candidates to replace the PAO.
May 3		Navy issues the PAO orders to Naval Air Systems Command, with a detach date of June 2017 and report date of July 2017.
June 17 – 20	Collision of USS FITZGERALD results in 7 sailor fatalities. CNO and the PAO travel to Japan to meet with families.	
June 21	CNO signs and issues a NPLOC and adverse fitness report to the PAO.	
June 23		CNO directs cancellation of Naval Air Systems Command orders for the PAO, due to the high visibility of the assignment. CNO tells his staff to locate a more appropriate, less visible position.
Aug. 7	A reporter from <i>USA Today</i> submits a Freedom of Information Act request for matters pertaining to the PAO.	
Aug. 16		The Navy issues new reassignment orders to the PAO to the Navy International Programs

		Office, with a detach date of August 2017, and a report date of September 2017.
Aug. 18		CNO directs the immediate removal of the PAO. The PAO departs immediately, ending his tenure as the CNO's PAO. The Deputy PAO starts performing the CNO's PAO duties until the permanent replacement reports for duty in October 2017.
Sep. 7	Senator Gillibrand requests a review.	
Sep. 11 – Dec. 20	The DoD OIG requests and reviews additional documentation from the Navy.	
Dec. 21	The DoD OIG initiates this investigation.	

\*In this chart, we refer to ADM Richardson as "the CNO," ADM Moran as "the VCNO," ADM Foggo as "the DNS," and RDML Cutler as "the CHINFO."

## FACTS RELATING TO THE ALLEGATIONS AGAINST THE PUBLIC AFFAIRS OFFICER, THE NAVY'S INVESTIGATIONS, AND THE NAVY'S ACTIONS IN RESPONSE TO THE INVESTIGATIONS

### *Allegations, Investigations, and Decision Making*

This section of the report describes in more detail the events at issue, including the investigations that occurred to address the allegations, the decisions regarding those investigations, and the reasons for those decisions.

#### Christmas Party

On December 13, 2016, the annual CHINFO Christmas party took place in the CHINFO workspaces in the Pentagon from approximately 11:00 a.m. to 6:00 p.m. One witness told us that during the party "people flowed in and out." A witness added that there were 75-100 people at the party "consistently."

The CHINFO, RDML Cutler, told us that the intent of the party was to "say thanks to those who support CHINFO in doing our job." RDML Cutler said that attendees included the Secretary of the Navy, several of the Assistant Secretaries of the Navy, and other Navy flag officers. RDML Cutler told us that Navy public affairs officers stationed outside the Pentagon, public affairs officers from other Services, and members of the media, including members of the Pentagon Press Corps, also attended.

RDML Cutler told us her office provided food and served beer and wine. Several witnesses told us there were a lot of people who attended the party, describing the CHINFO spaces as "packed" and as "standing room only." The Deputy CHINFO told us that over the years the CHINFO Christmas party "had developed quite the reputation of being one of the better parties in the building, because of the alcohol, and food."

After the CHINFO Christmas party, seven individuals from CHINFO, including Complainant 1 and the PAO, spent approximately two hours at dinner at a restaurant near the Pentagon. Complainant 1 told the IO that she sat next to the PAO during the dinner. She said they discussed career development and that she asked the PAO about her future career assignments.

Complainant 1 told NCIS that she had consumed alcohol during the Christmas party and at the dinner and that that she could not recall how many drinks she consumed.

Complainant 1 said that when she left the dinner, she took a cab with another female CHINFO officer and fell asleep during the cab ride. She started receiving phone calls and texts from the PAO. The other female CHINFO officer answered one of the phone calls. The other female CHINFO officer told the IO that the PAO asked her how Complainant 1 was doing and that the other female CHINFO officer told the PAO "something along the lines of 'thanks I got it.'" The text messages from the PAO stated, "Hey just want to make sure you ok...this is [the PAO]" and "We are leaving...you want company?" Complainant 1 replied to the text messages after she woke up in the cab. She replied, ""I got home OK. Thanks for checking on me!!!"

The next morning, Complainant 1 told her supervisor that she was "pretty upset" after receiving six phone calls and two text messages from the PAO in a 40 minute timeframe.

Later that morning, Complainant 1's supervisor informed the Deputy CHINFO of Complainant 1's statements to the supervisor. The Deputy CHINFO told us that, after listening to the supervisor's concerns, she contacted Complainant 1, and after listening, along with another CHINFO officer, to Complainant 1's account, the Deputy CHINFO contacted her legal advisor, who was also the DNS attorney. The Deputy CHINFO told us that she recommended that the DNS conduct a preliminary inquiry into the situation involving Complainant 1 and the PAO. The DNS attorney notified ADM Foggo.

On December 15, 2016, the DNS appointed a senior Navy officer to "conduct a preliminary inquiry into the facts and circumstances surrounding allegations of sexual harassment against [the PAO]."

The DNS attorney told us he drafted the preliminary inquiry appointment order for ADM Foggo's signature after consulting with the CNO attorney and the VCNO attorney. He told us they agreed to describe the complaint regarding the six phone calls and the two text messages in the appointment order as sexual harassment allegations.

The DNS attorney told us that convening a preliminary inquiry is a "normal response" to this kind of situation because, according to the Manual of the Judge Advocate General (JAGMAN), section 0203, "a preliminary inquiry serves as an analytical tool to help a commander determine whether an investigation is warranted and, if so, how it should be conducted."<sup>9</sup>

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<sup>9</sup> By regulation, the DNS is authorized to conduct fact-finding inquiries involving members of the OPNAV staff, which includes members of CHINFO, and for members of the CNO's personal staff with includes the PAO. The JAGMAN includes instructions supplementing and implementing the Manual for Courts-Martial and the UCMJ. Last published in 2012 by the Office of the Judge Advocate General, DON, the JAGMAN provides the legal practitioner with guidance on administrative, judicial, and non-judicial proceedings.

### Preliminary Inquiry

From December 15 through 21, 2016, the IO interviewed eight witnesses who attended either the CHINFO Christmas party, the dinner afterward, or both, including Complainants 1 and 2.<sup>10</sup>

Complainant 1 reported that she was upset by the phone calls and texts from the PAO after the dinner following the 2016 CHINFO Christmas party. The eight witnesses described differing versions of the PAO's and Complainant 1's conduct, including the following.

- The PAO's level of intoxication at the Christmas party was "tipsy," or "severely intoxicated."
- The PAO should not have driven from the Pentagon to the restaurant afterwards.
- Although the PAO was drinking hard liquor at the Christmas party, he was not drunk or acting inappropriately.
- A passenger in the car driven by the PAO to the restaurant believed that the PAO may have been "tipsy" but believed that the PAO was sober enough to drive.
- Complainant 1's level of intoxication at the Christmas party was a "bit too much" and "tipsy."
- Complainant 1 was intoxicated at the restaurant.
- The PAO did not inappropriately touch or hug anyone at the Christmas party or the restaurant.
- Towards the end of the dinner, the PAO had his arm on the back of Complainant 1's chair and was leaning in toward Complainant 1 during their conversation in an "uncomfortable" manner.
- The PAO did not exhibit any inappropriate behavior at the restaurant.

During the preliminary inquiry, Complainant 2 came forward and provided a witness statement detailing a previously undisclosed interaction with the PAO that had occurred in Baltimore, Maryland, in 2014. [REDACTED]

Complainant 2 told the IO and told us that approximately one month before the air show, the PAO contacted her and asked her if he could take her out to dinner. Complainant 2 told us that she thought going to dinner with the PAO was for, "professional mentoring, period." She told us the dinner, "was not a date, and I want to make that crystal clear."

In her preliminary inquiry statement, she wrote that after dinner, while having drinks at a bar, the PAO "placed his right hand on top of my left thigh," and later told her that he wanted to "come upstairs to [Complainant 2's] room and make out." She told us that she did not previously report this because she thought their encounter was a unique situation specific to her. When she heard what

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<sup>10</sup> The IO told us that he and the DNS attorney jointly interviewed the witnesses and asked them to provide draft written statements summarizing what they stated in the interview. The DNS attorney told us that he and the IO reviewed the written statements and if there were any notes from the interview that were relevant and omitted from the witnesses' written statements, the DNS attorney and the IO would add to the written statements and send them back to the witnesses. The DNS attorney also told us that the witnesses reviewed the additions and, once the witnesses were satisfied with the content, signed and returned the statement back to the IO and the DNS attorney for inclusion in the preliminary inquiry.

allegedly happened with Complainant 1, she told us, “what I thought was a one off with me, was actually not . . . this person had a pattern, and that is what scared me.”

In addition, Complainant 2 wrote in her statement that during the CHINFO Christmas party, the PAO, dressed as Santa Claus, gave her two “uncomfortably long hugs.” Complainant 2 stated that towards the end of the party the PAO “pulled her into a hug that she tried to pull away from.” She added the PAO “pulled her in for a second hug which lasted approximately five to ten seconds.” She stated, “I tried to maneuver myself away and pulled away as I was uncomfortable with the interaction.”

On December 21, 2016, the PAO invoked his right to remain silent under Article 31(b) of the UCMJ and refused to answer any questions when he was asked to provide a statement during the preliminary inquiry.

The IO told us that he and the DNS attorney collaborated on the preliminary inquiry report and that the IO gave the finished report to the DNS attorney to pass to ADM Foggo. In the report, dated December 21, 2016, the IO wrote that the three incidents (the PAO phone calls and texts with Complainant 1 after the dinner following the CHINFO Christmas party, the 2014 incident in Baltimore with Complainant 2, and the uncomfortable hugs at the CHINFO Christmas party with Complainant 2) did not rise to the “level of criminal sexual harassment,” but when taken together, the PAO “consistently failed to demonstrate the maturity or judgment that would be expected of an officer in his position.” Regarding Complainant 1’s allegations, the IO concluded that the PAO’s actions never rose to the “level of criminal sexual harassment” because the PAO never linked his sexual advances to any threat should Complainant 1 turn him down and that Complaint 1 never told the PAO that his behavior was unwanted. Regarding Complainant 2’s allegations, the IO concluded that although the PAO made an unwanted sexual advance, “none of the additional elements of sexual harassment were present.” Additionally, the IO concluded that the hugs at the 2016 Christmas party were not of a sexual nature.

In addition, the IO wrote that the PAO [REDACTED]

[REDACTED] The IO told us he based this statement on his belief that the PAO [REDACTED] and that he believed the incidents with Complainant 1 and Complainant 2 showed the PAO [REDACTED]

The IO wrote that the PAO “clearly appears to have exhibited predatory behavior.” The IO told us he viewed the PAO’s activities after the dinner with Complainant 1, specifically the six phone calls and two text messages, as the PAO “clearly trying to take advantage of the fact that she was intoxicated.” The IO also told us he interpreted the PAO’s actions in Baltimore with Complainant 2 as the PAO, “pursuing someone younger.”

In the preliminary inquiry report, the IO recommended [REDACTED] but he also recommended [REDACTED]

The IO told us he recommended [REDACTED]

[REDACTED] The DNS attorney told us that in his discussions with the

IO while preparing the preliminary inquiry's recommendations, the IO recommended [REDACTED]

#### Order to Stay Away from Complainant 1 and CHINFO Workspaces

The CNO's office suite is located on the fourth floor, near corridor six in the Pentagon. The PAO's workspace is not in the CNO's office suite. The PAO's workspace is on the fourth floor, on the sixth corridor of the Pentagon. The CHINFO workspaces are located on the fourth floor, fourth corridor. The PAO and CHINFO workspaces are in two separate corridors and approximately 370 feet apart. Complainants 1, 2, and 3 were collocated in the CHINFO workspaces during the events described in this report other than the events in Baltimore. They did not work for the PAO at any time during the events discussed in this report.

The Deputy CHINFO told us that on December 16, 2016, she verbally ordered the PAO to stay out of the CHINFO workspaces and to stay away from Complainant 1. The Deputy CHINFO told us that she issued the order to the PAO to "protect him, as well as the others, as the investigation [went] forward." She told us that before she issued the order, the PAO would visit the CHINFO workspaces "multiple times" per day.

Later that morning, the PAO e-mailed the Deputy CHINFO, acknowledged the verbal order, and asked for further clarification. The Deputy CHINFO told us that after consulting with the DNS attorney and the CNO attorney, she e-mailed the following to the PAO, "I have issued you an order not to enter the CHINFO spaces, and not to initiate any contact with [Complainant 1]." According to the three Complainants, the PAO had no supervisory control over the Complainants during the events addressed in this report. The three Complainants also told us that they had no further contact with the PAO after the order, either in the Pentagon or within the CHINFO workspaces.

#### The PAO's Statement

The DNS attorney told us that on December 22, 2016, he submitted the preliminary inquiry report to ADM Foggo. The IO told us that ADM Foggo wanted the IO to re-interview the PAO because the PAO had decided to waive his rights and was willing to submit to an interview, and ADM Foggo thought the PAO's testimony would be relevant to the investigation.

ADM Moran told us that after the PAO initially refused to provide a statement to the IO on December 21, 2016, the PAO told ADM Moran that he was "contemplating whether to cooperate with the investigators." ADM Moran stated that he told the PAO, "you absolutely should cooperate. Be transparent, and tell the truth."<sup>11</sup> ADM Moran told us that he started questioning the guidance he had provided to the PAO and asked his attorney if his guidance was "appropriate." ADM Moran told us that his attorney advised him that his guidance was appropriate, but the attorney also told him, "don't get involved any more than that in the investigation."

On December 29, 2016, the IO and a Navy judge advocate officer interviewed the PAO, after he waived his rights under Article 31(b), UCMJ. The PAO's statement included the following points.

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<sup>11</sup> The PAO had previously served as ADM Moran's public affairs officer during ADM Moran's tenure as the Chief of Naval Personnel.

- He stated that Complainant 1 was intoxicated at the dinner at the restaurant and [REDACTED] This happened more than once during the dinner.” The PAO also stated that Complainant 1 [REDACTED] during the dinner.
- He admitted to texting and calling Complainant 1 after the dinner because he was “really concerned about her.”
- He said he did not remember touching Complainant 2’s leg during the 2014 incident in Baltimore and that he did not remember telling Complainant 2 that he wanted to “make out” with her.
- He said he did not remember hugging Complainant 2 at the CHINFO Christmas party.

The DNS attorney told us that he provided the PAO’s statement to ADM Foggo for inclusion with the original preliminary inquiry packet. The DNS attorney told us he had a meeting with the CNO attorney and the VCNO attorney on December 30, 2016, to discuss the PAO’s statement and to develop a plan of action for the leadership in response to the preliminary inquiry. Part of their discussion addressed the recommendations in the preliminary inquiry that the IO had finalized before the inclusion of the PAO’s statement. The VCNO attorney told us that despite the PAO’s allegation that he was a victim, the recommendation to [REDACTED] was still a good recommendation because, “independent of his status as a victim, I don’t think that changed the judgement issues that were raised in the course of the [preliminary inquiry].” Therefore, the recommendations in the report were not changed.

#### Referral to U.S. Naval Criminal Investigative Service

The DNS attorney told us that prior to receiving the PAO’s statement, he had met with the CNO attorney and the VCNO attorney to review the evidence gathered during the preliminary inquiry. The DNS attorney said that after the meeting, he consulted with the senior NCIS representative to the Secretary of the Navy to determine if the evidence uncovered by the preliminary inquiry required a mandatory referral to NCIS. The DNS attorney said that the senior NCIS representative told him that the information obtained in the preliminary inquiry did not “meet that mandatory referral for sexual contact” to NCIS. The DNS attorney said that NCIS uses a “felony crime” standard to identify allegations warranting an NCIS investigation. The DNS attorney told us that he did not “think any of the PAOs actions ever warranted referral to NCIS.”

However, the DNS attorney told us that when the PAO submitted his statement on December 29, 2016, alleging that Complainant 1 [REDACTED], he believed that the PAO’s allegations required a referral to NCIS.<sup>12</sup>

Therefore, on January 4, 2017, the DNS attorney referred the preliminary inquiry, which included the PAO’s statement, to NCIS. On January 5, 2017, NCIS initiated two investigations. The first case identified the PAO as the subject for abusive sexual contact with Complainant 2 (Case 1). The second case identified the PAO as the alleged victim of abusive sexual contact, with Complainant 1 as

<sup>12</sup> SECNAVINST 1752.4B, August 8, 2013, Sexual Assault Prevention and Response, paragraph 5.b, states, “Commanders must take every report of sexual assault seriously, immediately refer reports to the NCIS for investigation.”

the subject (Case 2). NCIS Case 2 also addressed Complainant 1's concerns about the PAO -- specifically the phone calls and text messages the PAO sent Complainant 1 on December 14, 2016.

### The PAO Assignment Memorandum

The DNS attorney told us that after the referral to NCIS, he collaborated with the VCNO and CNO attorneys and prepared a January 9, 2017, action memorandum from ADM Foggo to ADM Richardson, with three proposed courses of action (COAs) for the leadership to consider regarding the PAO's duty location. All three attorneys told us that the fact that the PAO was an alleged victim in NCIS Case 2 complicated ADM Richardson's decision regarding the PAO's duty location, because of the potential for a reprisal allegation. The DNS attorney also told us that the three COAs presented to ADM Richardson were "legally supportable and grounded in policy."

The following are excerpts from the three COAs presented to ADM Richardson.

COA 1: Status Quo. Absent degradation in public affairs support or additional threat to good order and discipline, [the PAO] could continue serving as CNO Public Affairs Officer until the completion of the NCIS report.

COA 2: Temporarily Reassign [the PAO] within OPNAV. [The PAO] may be administratively reassigned within the OPNAV Staff pending completion of the NCIS report. [The PAO] could claim this as retaliation or reprisal, but reassignment is supportable based on the PI.

COA 3: Transfer [the PAO] to Region NDW [Naval District Washington] for Potential Accountability Action. Deferring the adjudication of misconduct identified in the preliminary inquiry is discretionary; OPNAV standard procedure is to transfer disciplinary cases to the Region for appropriate case disposition.

ADM Foggo told us that he remembered "packing" the action memorandum and the preliminary inquiry into a sealed pouch and providing the pouch to ADM Richardson in one of their "weekly or biweekly sync sessions." ADM Foggo said that he remembered telling ADM Richardson, "you have some choices, you have some actions that you can take." ADM Foggo stated that he did not make a specific COA recommendation to ADM Richardson. He told us, "I just told him I could take him [the PAO] under my wing, we can send him over to Navy Region, or you could keep him where you've got him."

ADM Moran told us that once ADM Foggo notified him that he was conducting the preliminary investigation, ADM Moran told ADM Foggo, "[o]kay. You've got it. That's your role." He told us, "because of my personal relationship, professional relationship with [the PAO] I really felt like I needed to stay out of it." ADM Moran also told us that he was worried about the appearance and "not looking like we're influencing the investigation." In addition, ADM Moran said that he informed ADM Foggo that he had to distance himself from the preliminary inquiry and any related discussions due to his role as the appeal authority for any military justice actions or for any civilian misconduct actions that might arise because of the matters. ADM Moran stated that he relied on his discussions with his attorney to advise the other attorneys that, "there is no role for me [in this] investigation."

ADM Moran told us that he did not make a COA recommendation to ADM Richardson. He said that he remembered having a conversation with ADM Richardson and stated that ADM Richardson was, "struggling with whether to let the process run its course, i.e., the NCIS investigation complete, findings from that, take the action. Or, doing something sooner." ADM Moran told us that he acted as a "sounding board" for ADM Richardson during their conversation and told ADM Richardson, "I think you're on good ground to go either way because there is an active investigation going on you're not presuming guilt, but this is a unique place."

ADM Richardson told us that he remembered receiving the preliminary inquiry and the action memorandum from ADM Foggo and having a conversation with ADM Foggo. ADM Richardson told us that he could not recall if ADM Foggo recommended a particular COA. ADM Richardson also told us that while he and ADM Moran had discussions during this period, ADM Moran did not recommend a particular COA because "he was excluding himself in all of these things."

ADM Richardson told us that he chose COA 1 and decided not to move his PAO during the conduct of the NCIS investigations. When we asked him to explain why he decided against moving his PAO, ADM Richardson stated:

[w]e want to maintain that the victims are protected, their rights are protected, they're not subject [to] any further coercion, pressure, harm, influence, whatever, from [the PAO]. And I think we had sufficient physical distance. We had the MPO [Military Protective Order] in place . . . and close monitoring, and no reports that there was ever any violation of that order. So that aspect kind of was in place and seemed to be effective. The other one was that, you know, we didn't want to do anything prejudicial or premature until we had a full understanding of the full facts, what had transpired. And we wanted to make sure that [the PAO's] rights were protected, and we wanted to do this thorough investigation. And so as I kind of figured out, tried to assess what we do while this investigation is going on, I think we met all of those criteria by virtue of the course of action we chose.

ADM Richardson also told us he relied on his executive assistant and "ADM Foggo and his team" to closely monitor the PAO to ensure compliance with the order to stay away from Complainant 1 and her workspace. In addition, ADM Richardson said that he too was monitoring the PAO because they "spend a lot of time in each other's company" and ADM Richardson was "fairly confident" he would have been notified if the PAO contacted Complainant 1 or visited Complainant 1's workspace.

When we asked ADM Richardson whether the proximity of his PAO's office in relation to the alleged victims' daily workspaces factored into his decision to leave his PAO in place during the NCIS investigations, ADM Richardson said that the proximity was "sufficiently distant." When we also asked about the possibility of incidental contact between his PAO and the alleged victims in the Pentagon and if that possibility also factored in his decision to keep his PAO in place, ADM Richardson told us, "[t]here's no real necessity for them to be in each other's company, visibly they're in different corridors of the Pentagon. You're probably aware of how this place works. You could be four doors down and never see the guy." ADM Richardson stated that "there was an order that [the PAO] was not going to go down to the CHINFO spaces." He also told us, "they [the alleged victims] were not under his [the PAO's] direct supervision. He had really no chain of command type of relationship."

When we asked ADM Richardson if he considered the optics or perceptions of his decision to leave the PAO in place during the NCIS investigations, ADM Richardson stated:

[w]ell, you know, in hindsight, not sufficient consideration. And so, one of the things that I also testified to on the record was that I've become much more aware by virtue of this process of kind of the perspective of the victims, and I'd have to say I made some assumptions that their leadership, you know, Chief of Information, et cetera, was maybe keeping them apprised of the progress of this thing and that this wasn't just a, you know, stagnant, that we were actually doing all these things. But I'm not sure that that assumption is valid in hindsight.

When we asked ADM Richardson how he communicated his decision to keep the PAO in place, ADM Richardson told us, "I don't know. It might have been a verbal order or something like that."

#### Attempts to Find a Replacement

The Navy senior public affairs officer detailer, located in Millington, Tennessee, is responsible for assigning public affairs officers throughout the Navy. He told us that "around January 17, 2017," RDML Cutler contacted him and requested possible immediate and permanent replacements for the PAO. On January 18, 2017, the detailer presented a plan to RDML Cutler and Deputy CHINFO. The plan consisted of four PowerPoint slides presenting options for immediate or permanent replacements for the PAO, including a slide depicting four senior Navy PAOs already working in the Pentagon. The detailer and RDML Cutler told us that the four senior PAO officers, with permission from the principals they supported, could have provided immediate public affairs officer support to ADM Richardson.

RDML Cutler told us that she had initiated this plan to find a replacement for the PAO. She said, "we needed to be ready with a set of courses of action, you know, in the event that leadership decided to move him. I think it's going to be an inevitable -- my view was it was going to be inevitable, it would be sooner or later, and we needed to have -- identify some courses of action to be able to present to the CNO, should he pull that trigger."

ADM Richardson told us he was unaware of RDML Cutler's initiative in January 2017 to find a replacement for the PAO.

RDML Cutler told us that she received the plan from the PAO detailer but did not present the plan to ADM Richardson until their meeting on April 26, 2017, when ADM Richardson came to her office to discuss getting a replacement for his PAO.

#### New Allegation

On February 15, 2017, Complainant 3 contacted the NCIS agent conducting the two NCIS investigations and reported that the PAO had slapped her "on the buttocks" during the December 2016 CHINFO Christmas party. However, she also told the NCIS agent that she did not want to be part of the investigation or provide a statement.

Complainant 3 told us that during the CHINFO Christmas party, the PAO, dressed as Santa Claus, had walked up beside her and in response to her saying, "what's up bad Santa," he responded "I'll show

you bad Santa,” and then he “put his arm around me and moved his hand down and swatted me on the butt.” Complainant 3 told us that she reacted to the PAO’s action by telling him, “do something like that again and you’ll be in a lot of trouble Santa” or “something like that.”

Complainant 3 told us that she came forward to the NCIS agent with her report because of the two other Complainants who made the initial allegations against the PAO. Complainant 3 worked with the other two Complainants in the CHINFO workspaces. At the time of the NCIS investigation, Complainant 2 worked for Complainant 3, and Complainant 3 had become aware of the investigation. Complainant 3 told us, “if these two young ladies were brave enough to tell their part of the story, I should be too.” Complainant 3 also told us that she told her “part” because she “owed” Complainants 1 and 2 her support.

The NCIS opened a third case (Case 3), a suspected violation of Article 120 (Abusive Sexual Contact), UCMJ, focused on the PAO as the subject and his alleged actions toward Complainant 3 at the Christmas party.

On March 6, 2017, Complainant 3 signed a statement for NCIS reporting that she did not wish to participate in the investigation and that she declined to make a formal written statement describing the PAO’s actions.

As a result of Complainant 3’s decision to not participate in the NCIS investigation, NCIS closed Case 3 on March 16, 2017.

When we asked Complainant 3 why she declined to participate in the NCIS investigation, she told us that the NCIS agent informed her that what the PAO did was assault and that she was the victim and the next step was to press charges. She told us that she declined to participate further with the investigation because “she didn’t want to press charges” against the PAO. She stated, “I want to be clear, this happened, and it’s wrong, but I don’t feel like [I was] sexually assaulted.”

#### Military Protective Order

On March 24, 2017, the legal counsel representing Complainant 2 in NCIS Case 1 asked the DNS attorney for a military protective order (MPO) against the PAO. In support of the request, Complainant 2’s counsel told the DNS attorney [REDACTED]

Complainant 2 also told us that she was unclear about the parameters of the Deputy CHINFO’s verbal order to the PAO on December 16, 2016 regarding Complainant 1 or if the verbal order was even legal. Complainant 2 also told us that she requested the MPO through her counsel because “I did not want to have any interaction with this man [the PAO].” Complainant 2 told us that, other than answering phone calls from the PAO in her official capacity, she did not interact with the PAO after the Christmas party.

On March 27, 2017, ADM Foggo’s executive assistant imposed a written MPO on the PAO. The written MPO cited [REDACTED]

The DNS attorney told us that he prepared the MPO paperwork for the executive assistant's signature.

The MPO instructed the PAO to:

- refrain from initiating any contact or communication with Complainant 2;
- remain at least 100 feet away from Complainant 2, her residence, and workplace;
- take reasonable steps to avoid contact in the Pentagon; and
- not discuss ongoing investigations in the workplace or with other service members, except those service members providing legal representation services.

#### NCIS Reports of Investigation

On March 16, 2017, NCIS, following normal procedures, turned over its reports of investigation to the RLSO, Naval District Washington, for an independent evaluation of potential disciplinary action. The NCIS reports of investigation included summaries of the allegations, documentary evidence, and witness statements, but no conclusions or recommendations.

The following bullets summarize key facts included in reports of investigation for NCIS Case 1 and 2.

- Complainant 1 provided a screenshot of the two text messages the PAO sent Complainant 1. The text messages stated, "Hey just want to make sure you ok...this is [the PAO]" and "We are leaving ... you want company?" Complainant 1 also denied [REDACTED] during the group dinner after the CHINFO party and that, if anything, she may have [REDACTED]. She stated that she drank alcohol at the Christmas party and at the dinner afterwards but could not provide an exact amount of alcohol consumed.
- The PAO stated that Complainant 1 [REDACTED] during the dinner after the 2016 CHINFO Christmas party. He told NCIS that the touching was not accompanied by any words or flirtatious actions and that he did not verbally object to the touching. He added that he did not feel that he was a sexual assault victim and that he and Complainant 1 were drinking at the dinner. He denied that he was intoxicated. He stated that he sent a text message to Complainant 1 and called Complainant 1 several times because he wanted "to make sure she made it home ok." The PAO told NCIS that the "do you want company" text message was intended for another co-worker.
- The other Navy officer, who the PAO said [REDACTED]
- The three CHINFO personnel seated with the PAO, Complainant 1, and the other male officer during the dinner after the 2016 CHINFO Christmas party did not observe anything related to a sexual assault or otherwise sexually suggestive conduct between any members at the table.
- Complainant 2 reiterated the statement she made to the IO about the 2014 incident in Baltimore at a bar after a one-on-one dinner with the PAO, and about the 2016 CHINFO



COA 1: Detachment for Cause (DFC). Misconduct is a basis for DFC. DFC will be approved without disciplinary action being taken “only in unusual instance”; however, this instance is unusual. The individual is in a very highly visible position and his service in the current assignment has become and will likely continue to be disruptive to good order and discipline.

COA 2: Transfer to Region NDW for appropriate action. If administrative discharge proceedings or disciplinary action [at non judicial punishment] is appropriate, the case will be referred to Commandant, NDW, for processing.

COA 3: Other Administrative Action. Other administrative actions include counseling, admonition, and censure. A non-punitive letter of caution (NPLOC) would be considered an administrative action. This COA is susceptible to criticism on multiple fronts. It is inconsistent with the victim’s expressed views, *A Design for Maintaining Maritime Superiority* (Integrity & Accountability), and the *Navy Leader Development Framework* (Strong Character).<sup>15</sup>

This action memorandum also summarized the RLSO prosecutorial review, stating that [REDACTED]

In addition, the action memorandum provided the Complainants’ preferences regarding the disposition of the allegations regarding the PAO’s conduct in Baltimore, at the Christmas party, and during the evening after the Christmas party. The action memorandum stated, “the [Complainants] expressed that the individual should not be assigned in any leadership position or any other position that would enable him to influence others’ careers. One [Complainant] believed he should be held accountable at NJP [nonjudicial punishment].”

The DNS attorney told us that he briefed ADM Foggo regarding the three COAs, discussing the “pluses and minuses” of each COA, how they would affect the PAO, and “how [the COAs] would be viewed” by the victims.

The VCNO attorney told us that of the three proposed COAs, she considered COA 2 the least desirable due to the possibility that the PAO could turn down the offer of nonjudicial punishment and demand trial by court-martial. The VCNO attorney also told us that out of respect for “the Vice’s desire to stay out of it,” she provided her recommendation to ADM Moran’s executive assistant and let him decide whether to inform ADM Moran. ADM Moran’s executive assistant told us he did not remember receiving the VCNO attorney’s COA recommendation. The executive assistant stated, “I also don’t

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<sup>15</sup> According to the January 5, 2016, Chief of Naval Operations Public Affairs press release, the CNO’s message, “*A Design for Maintaining Maritime Superiority*,” addressed how the “Navy will adapt to changes in the security environment and continue to fulfill its mission.” The document also “details four ‘Core Attributes’ that serve as guiding criteria for command decisions in decentralized operations: integrity, accountability, initiative, and toughness.” According to the January 25, 2017, Chief of Naval Operations Public Affairs press release, the CNO released the *Leader Development Framework* to “outline how the Navy will develop leaders to demonstrate both operational excellence and strong character.”

remember passing anything to the VCNO; although I was governed by the same intent to keep him out of the chop chain.”

The CNO attorney told us that none of the proposed COAs in the memorandum stood out to him as “illegal or nonsensical.” He said that he did not remember having a “detailed discussion” with ADM Richardson about the courses of action. He stated that his discussion with ADM Richardson about the COAs would have been, “Hey sir, is there anything else you need? Do you want to discuss any of these?” The CNO attorney told us that ADM Richardson had the action memorandum, the NCIS investigations, and the preliminary inquiry to consider before making his decision about what to do with the PAO.

ADM Foggo told us that he packaged the three NCIS investigations, the prosecutorial review, and the action memorandum and delivered the entire package to ADM Richardson. ADM Foggo told us, “I told him you [have] some options here, you could go with the Uniform Code of Military Justice, you could charge [the PAO] with conduct unbecoming, or you could go with administrative punishment.” He said that ADM Richardson responded to him, “Okay, I’ll get back to you.”

When we asked ADM Foggo what punishment he recommended to ADM Richardson, ADM Foggo said that he recommended [REDACTED]

[REDACTED] He told us that his recommendation was to, [REDACTED]

ADM Moran told us that he did not remember seeing the action memorandum from the DNS attorney. He also said that he did not recall sitting down and reading the three NCIS investigations because they “wouldn’t have come through me.” He stated he had a vague recollection of speaking with his attorney regarding appropriate punishment for the PAO, but also told us that no one came to him for a recommendation. He told us, “that wasn’t my role. So I didn’t make a recommendation,” and further stated that if he had been asked, he would have “done it formally.” He told us that he might have had a conversation with ADM Foggo regarding the appropriate punishments for the PAO, but he could not recall it. ADM Moran also said that he remembered having a discussion with ADM Richardson concerning what to do with the PAO but again served as a “sounding board” for ADM Richardson. He told us that ADM Richardson did not talk to him about the specific COAs outlined in the action memorandum. He also stated that when ADM Richardson told him he intended to issue his PAO a “declining fitness report,” and “a formal letter,” he responded to ADM Richardson, “I think that’s appropriate.”

When we asked ADM Richardson how he received the matters from ADM Foggo, ADM Richardson said, “I don’t remember a vivid conversation, but I’m not in a position to say it never happened.” ADM Richardson added that he and ADM Foggo may have had a short discussion about COAs when ADM Foggo “came in and handed me the stuff.” Regarding the action memorandum dated April 7, 2017, ADM Richardson told us, “whether it was in the package or not, I just didn’t see it.” We also asked ADM Richardson about the following statement in the action memorandum: “[COA 3] is susceptible to criticism on multiple fronts. It is inconsistent with the victim’s expressed views and my views in the design of maintaining maritime superiority and the Navy Leader Development Framework.” ADM Richardson told us

that the statement in the action memorandum “would have caught my attention right away. I would not have forgotten that. So I can say, unequivocally, that I did not see this memo.”

ADM Richardson added he did not agree with the “inconsistency” reference in the action memorandum “given the action that was taken” against the PAO. He told us:

I would have loved to have had the conversation [with the author of that statement] and walked him through why it is not inconsistent. Here's all these things that happened, you know, it's just actually pretty consistent with this character. [The PAO's] being fired for matters of character, right, and his career is over solely for matters on character, right. There's nothing in the competence stack . . . side of his business. It's not like he . . . was a bad PAO, right, or he misstep[ped] professionally from a competent standpoint. This was -- it is completely consistent with that where I took this guy off of the front line solely because of a character problem.

ADM Richardson told us that, after receiving the information concerning the PAO from ADM Foggo, he discussed certain administrative actions with the CNO attorney, who did not offer any recommendations beyond those contained in the prosecutorial review. ADM Richardson said that neither ADM Foggo nor ADM Moran recommended a specific punishment for the PAO's conduct. ADM Richardson told us that he was “heavily influenced by the recommendations of the professional prosecutors,” referring to the April 7, 2017, prosecutorial review from the RLSO. ADM Richardson said:

they recommended [REDACTED] . . . just in terms of the spectrum of things that were available, there was a take it to court-martial, there was nonjudicial punishment, Article 15, Captain's Mast, and then there was administrative. . . . I agreed with the prosecutors that [REDACTED] [The PAO] would have refused Captain's Mast because he doesn't have to do that while attached to shore duty. The administrative action I ended up taking was, I guess, fairly robust. It was kind of the same thing that would have happened even if I had taken it to Captain's Mast, so I don't think there was a whole lot of difference in my mind in terms of what I would have done to dispense with this case, in terms of firing [the PAO] from the staff, this adverse FITREP and the letter.

When we asked ADM Richardson to describe his process in determining the appropriate punishments for his PAO, he told us:

I remember kind of sitting down, yeah, I'd already had all the conversations and I just needed to take the little bit of time to kind of think through what I wanted to do. I don't remember anybody kind of being in the room at the time when I . . . sketched out the action I was going to take.

When we asked ADM Richardson to explain his rationale for choosing the administrative punishment for his PAO, he stated:

as I saw it my mind was saying, “Okay, is this going to be something that will not be completely temporary, will this be a permanent part of his record,” and the

FITREP is the thing that is an unambiguous, permanent part of his record that documented his role in this.

On April 26, 2017, the CNO attorney e-mailed the VCNO attorney and the DNS attorney and informed them of ADM Richardson's decision to take administrative action against the PAO. The CNO attorney wrote, "CNO plans to meet with the VCNO today, but intends to: reassign [the PAO] from personal staff, issue NPLOC, and provide adverse FITREP."

When we asked ADM Richardson about his decision not to reassign the PAO immediately, he stated, "that's the question of the day, isn't it?" He said that he was waiting for the orders to "get [the PAO] out of here" but it "never came together to get the appropriate assignment for him that would not make him a public spokesman for the Navy." He told us:

I decided that we would write him an adverse FITREP, essentially ending his career as an upwardly mobile public affairs officer, and that he would have to be removed from the staff. . . . then started down the road executing those actions, and this is where it kind of got, you know, bogged down I guess is the best way to put it. And so I think that, for lack of any better way, the mechanics just got really screwed up in terms of executing the decision made in April briskly, and so that took far longer than it should have. And I sort of realized somewhere along the line that really I had, by defacto, default, or whatever, by hook or by crook, I had kind of become the action officer on this thing, you know. So usually the way this works is you make decisions, staff executes decisions, and this one, for some reason, the staff just wasn't coming to . . . an execution plan that really met my intent. You know, I probably owned some of that because I didn't communicate my intent clearly enough, there was some transition in the staff, whatever it was. You know, I take responsibility and I have testified on the record that in hindsight, if I was going to do this all over again, I would have executed that part a lot more swiftly.

#### *Adverse Administrative Action and Reassignment*

##### Meeting with RDML Cutler

On April 26, 2017, both ADM Richardson and ADM Moran met separately with RDML Cutler in her office to discuss ADM Richardson's decision to reassign his PAO from his personal staff and to discuss the plan for the PAO's replacement. RDML Cutler told us that ADM Moran came to her office and told her that ADM Richardson would be visiting her later in the day and would be expecting a plan for the PAO's replacement. ADM Moran told us that he wanted to have the conversation with RDML Cutler because he knew ADM Richardson wanted PAO replacement options and was not aware if RDML Cutler had any replacement plans.

RDML Cutler told us that when ADM Richardson came to her office, he wanted to know three things: (1) who was going to replace the PAO; (2) where the PAO was going; and (3) what was going to be the narrative describing why the PAO was leaving ADM Richardson's personal staff. RDML Cutler also told us that ADM Richardson wanted the PAO to remain in the "D.C. area" where "his talents can be used." RDML Cutler said that ADM Richardson also told her he wanted a PAO comparable to the one he currently had. RDML Cutler said that she told ADM Richardson that she did

not have “another [PAO’s name],” but she informed ADM Richardson, “I have some very capable, very competent PAOs.” RDML Cutler said that she immediately offered up two names of potential candidates.

ADM Richardson told us that he visited RDML Cutler in her office because he needed her, as the public affairs officer community leader, to help remove the PAO and find a replacement. ADM Richardson told us that he eventually got a list of potential candidates from RDML Cutler, but that the list “was sort of the local people, the convenient people rather than the kind of talented people I needed to come in.”

When we asked ADM Richardson whether he could have removed the PAO immediately after his decision on April 26, 2017, and let the PAO’s deputy serve as his primary PAO, he told us, “Yeah, I could have. [I didn’t because] . . . I was awaiting for [the PAO] to get a set of orders to move him on. I mean, it is just kind of you sort of expect that to happen. And it just didn’t.”

#### Reassignment Orders

On May 3, 2017, Navy Personnel Command issued the PAO reassignment orders to detach from ADM Richardson’s personal staff in June 2017 and report to Naval Air Systems Command, Patuxent River, Maryland, in July 2017.

With a recommendation from ADM Moran, ADM Richardson identified a possible PAO replacement [REDACTED] at the time. From April 27 through May 22, 2017, ADM Richardson, ADM Moran, and RDML Cutler negotiated for the return of the possible replacement. Their combined efforts ended unsuccessfully. After this attempt to find a replacement failed, ADM Richardson told us that he identified another possible PAO replacement. However, shortly after June 6, 2017, ADM Richardson interviewed the candidate and decided not to select this candidate to replace his PAO due to complications with relocating the candidate at that time.

ADM Richardson told us that there was some initial momentum after the April 26, 2017, visit with RDML Cutler to get a replacement but that initial momentum “just sort of kind of languished.”

#### Collision of USS FITZGERALD

On Saturday, June 17, 2017, the USS FITZGERALD, an Arleigh Burke Class destroyer with 300 sailors onboard, collided with a container ship in the Sea of Japan. The collision resulted in the deaths of seven sailors. On Sunday, June 18, 2017, ADM Richardson, accompanied by his PAO, departed for Japan and met with the families, survivors, and other personnel affected by the collision. On June 20, 2017, ADM Richardson and the PAO returned to the United States.

Non-Punitive Letter of Caution

On June 21, 2017, ADM Richardson signed and delivered a NPLOC to the PAO.<sup>16</sup> ADM Richardson told us that he had a one-on-one meeting in his office with his PAO, provided him a copy, and asked his PAO if he had any questions. He said his PAO had no questions.

ADM Richardson told us that his attorney had prepared the draft of the NPLOC and that he had “tweaked” the language. The following are excerpts from the NPLOC.

- [REDACTED]

ADM Richardson said there was no mention of “sexual harassment” or “sexual assault” or “female junior officers” in the NPLOC because he relied on the language in the prosecutorial review from the RLSO -- specifically the language in the prosecutorial review that [REDACTED]. He added that he did not want the PAO “to come back with his counsel and say [REDACTED]”

Adverse Fitness Report

ADM Richardson also delivered the adverse fitness report to the PAO during the same one-on-one meeting on June 21, 2017. Table 3 is a description of the adverse material contained in the fitness report.

*Table 3. The PAO Fitness Report Adverse Material \**

Block Number	Block Title	Rated	Comments
41	COMMENTS ON PERFORMANCE	“Blocks 34/35/38: Evaluated as [REDACTED]”	[REDACTED]

<sup>16</sup> Section 0105 of the 2012 JAGMAN defines a non-punitive letter of caution (NPLOC) as, “not considered punishment; rather, the letter is issued to remedy a noted deficiency in conduct or performance of duty,” and the NPLOC “will be kept a personal matter between the member and the superior issuing the nonpunitive letter.”

34	COMMAND OR ORGANIZATIONAL CLIMATE/EQUAL OPPORTUNITY	[REDACTED]	
35	MILITARY BEARING/ CHARACTER	[REDACTED]	
38	LEADERSHIP	[REDACTED]	
42	Promotion Recommendation	[REDACTED]	

\* Rating scale for fitness report performance traits: 1.0 = Below Standards, 2.0 = Progressing, 3.0 = Meets Standards, 4.0 = Above Standards, 5.0 = Greatly Exceeds Standards.

ADM Richardson told us, "I wrote him the worst fitness report I've ever written in my career and ended his career." When we asked him why there was no mention of "female junior officers" in the fitness report, ADM Richardson told us that he relied on the same guidance from the RLSO contained in the prosecutorial review that he used for the NPLOC, that the investigation [REDACTED]

The PAO signed the adverse fitness report on June 21, 2017, and indicated he did not intend to submit a statement to ADM Richardson about his rating.

#### Modification to Naval Air Systems Command Orders

On June 23, 2017, ADM Richardson's Deputy Executive Assistant e-mailed the PAO detailer and stated, "As discussed, please change [the PAO] orders to detach Aug [2017] and report Sep [2017]."

When we asked ADM Richardson about the modification to the PAO's orders to a location other than the Naval Air Systems Command, he stated:

Here's how this kind of happened. This is when it was slow to dawn on me that I had become the action officer in this thing, right? So I can't recall the exact, you know, re-create the exact thing, but I can give you a sense of how. So I'm kind of doing my business [as] the CNO, and I'm on my way to go to a meeting or something like that, and somebody out here in the front office said, "Oh, here, and by the way we're going to reassign [the PAO] to NavAir [Naval Air Systems Command]," and I was like, "Well, what's he going to do?" "Well, he's going to be the Navy spokesperson for . . . the physiological episodes problem that were having with pilots," and I was like, "No he's not," you know, "This is not the type of reassignment we're looking for, so we need to think again about where we're going to send him. I don't need [the PAO] to be a Navy spokesman for anything, so that's not going to do."

When we asked ADM Richardson to comment on his decision to cancel the PAO's next assignment as the spokesperson at Naval Air Systems Command because he did not want the PAO to be a Navy spokesperson for anything, which effectively allowed the PAO to remain in an even more prominent public position as the CNO's spokesperson, ADM Richardson told us that he recognized the "logic of inconsistency there."

ADM Richardson told us that between June 23, 2017 and August 2017, he anticipated that Navy personnel officials would issue new reassignment orders for the PAO. He said, however, that the process got “really screwed up.” He stated, “So usually the way this works is you make decisions, staff executes decisions, and this one, for some reason, the staff just wasn’t coming to . . . an execution plan that really met my intent.” He told us that he was waiting for the PAO to get a new set of orders that would not keep him in a public spokesman role for the Navy, and “it just didn’t [happen]” until August 16, 2017.

#### Freedom of Information Request

On August 7, 2017, a reporter from *USA Today* submitted a Freedom of Information Act (FOIA) request to the Department of the Navy, which asked for “copies of the investigative reports, findings, and sanctions issued against [the PAO]” and “copies of protective orders issued against [the PAO].”

ADM Richardson told us that he became aware of the FOIA request “probably pretty soon after it came in. That’s the type of stuff that I’m made aware of. . . . I’m usually just made aware that there’s been a request.”

#### New Reassignment Orders for the PAO

On August 16, 2017, Navy Personnel Command issued the PAO new reassignment orders to detach from ADM Richardson’s personal staff by the end of August 2017 and to report to the Navy International Programs Office, Washington Navy Yard, in September 2017.

The PAO detailer told us that he had received ADM Richardson’s staff’s request to change the PAO’s orders on June 23, 2017. He told us that the delay between receiving the request for changed orders on June 23, 2017, and issuance of the new reassignment orders on August 16, 2017, was due to “the normal assignment process” – specifically, engaging numerous “order-writing stakeholders.”

#### The PAO is Reassigned

ADM Richardson told us that on August 18, 2017:

I think at the morning stand up I just said, “Hey, this guy’s got to be gone. It’s been too long and the thing [the PAO’s reassignment] is not coming together. I still do not have a freaking relief here. We still haven’t found a good place for him, but this is the end. It’s done.”

When we asked ADM Richardson about any connection between the *USA Today* FOIA request and his decision on August 18 to reassign the PAO, he stated:

So, I don’t think we need to be shocked that the *USA Today*, having broken the story, would want to bring back any kind of sense of import to that story, but cause-and-effect there, there just isn’t any. And the decision [to reassign the PAO] was probably not known, just like it was not visible to CHINFO at the time, and the victims, I’m sure it wasn’t visible to *USA Today* at the time, but it had already been decided in April. Several actions had been taken by that time

including, albeit, the delay FITREP and letter, it was well before the FOIA request that those things were on the record. So I just don't think that holds water.<sup>17</sup>

On August 18, 2017, the PAO departed on leave and officially ended his tenure on ADM Richardson's personal staff.

ADM Richardson told us that his Deputy PAO assumed the PAO duties and performed them over the next 3 months before a permanent PAO replacement arrived. ADM Richardson told us the Deputy PAO did "a terrific job."

The permanent replacement, a Navy captain, reported for duty in October 2017.

When we asked ADM Richardson if he took sufficiently expeditious action regarding the adjudication of his PAO's conduct, he told us:

I'm going to say up to the execution of the investigation[s], the completion of the investigation[s], all of that in April, the decision following the investigation[s], the prosecutorial [review]—the recommendations of the prosecutors, I think that all proceeded fairly expeditiously. The mechanics of executing that decision [to reassign the PAO] that I made in late April, as I've said on the record, I could have done that faster.

ADM Richardson also told us, "Probably another reason the mechanics got dorked up is there was a lot of turnover that summer around here," including his executive assistant, his attorney, and the director of the strategic actions group. ADM Richardson added:

There's this sense that there was some kind of a deliberate decision made that, by virtue of the public affairs burden on the CNO that yeah, he's [the PAO] the only guy that can handle it. We need to keep him in place, or by virtue of the fact there's all this other turnover happening that he's [the PAO] got to be here. There is none of that.

ADM Richardson also stated that the collision of the USS FITZGERALD, "might have contributed to the slowness and the mechanical part of executing this decision." However, he also told us "there was no deliberate type of thing done to keep him [the PAO] in place."

ADM Richardson stated that he could have replaced the PAO with the Deputy PAO immediately after he made the decision to reassign him on April 26, 2017. When we asked ADM Richardson if the time between the decision to impose the NPLOC and adverse fitness report and the date he actually imposed the punishment was sufficiently expeditious, ADM Richardson stated the NPLOC and adverse fitness report were "tied to the transfer" and "Nothing about this [executing the PAO's reassignment] was sufficiently expeditious."

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<sup>17</sup> On September 7, 2017, the *USA TODAY* published an article with the headline "Bad Santa: Navy's top admiral kept spokesman after booze party, sexual predator warning." The article included the following: "[The PAO] was not reassigned as spokesman for Admiral John Richardson, the Chief of Naval Operations, until mid-August, just weeks after *USA TODAY* sought documents regarding the incidents and the investigation."

On April 19, 2018, ADM Richardson testified before the Senate Armed Services Committee on the Navy Posture. Senator Gillibrand asked ADM Richardson, “Do you have a sense of what message members serving under you received from [the PAO] being allowed to stay in that position, and have you changed your approach because of that incident?” ADM Richardson responded:

The beginning of that approach was really defined by making sure that we got a thorough investigation into a complicated scenario there, with allegations and counter allegations. So, that investigation took some of the time. Having said all that, I've become acutely aware that that may have sent a bad message, particularly to the survivors of the behavior. And so that—you know my—my radar has become completely retuned in terms of sensitivity to that message, and I—I hope that we've arrived at a good place at the end of—at the end of this event. It took longer in hindsight than it should have, if I was going to do it again, I would move faster.

On November 17, 2017, ADM Richardson changed Naval Military Personnel Manual 1611-010 to state that leadership “should” temporarily reassign an officer serving on the personal staff of a flag officer, general officer, or senior civilian if it is determined that there is sufficient evidence of misconduct to warrant a formal investigation.<sup>18</sup> ADM Richardson told us he directed the change:

so that nobody has to worry about this going forward. And so it's now a matter of procedure that if you have a member of your personal staff as a senior Navy leader just send him somewhere. Get him off of your staff. Send him to a neutral corner so that . . . it won't be judged as prejudicial because it's just automatic. And so we -- I've learned from this experience that I don't want anybody else to have to wrestle with this same thing that I did.

### **Admiral Richardson’s Response to Our Tentative Conclusions Letter**

On August 9, 2018, we provided ADM Richardson our tentative conclusions and an opportunity to comment before we issued our final report. On August 20, 2018, ADM Richardson, through his assigned counsel, provided us with a response to our preliminary conclusions. The following is ADM Richardson’s response in its entirety:

I received your draft report of investigation and your tentative conclusions letter, reference (a). I welcome the level of scrutiny shown by your investigation as it is appropriate to the Office of the Chief of Naval Operations, an office which must enjoy the public trust. I have learned a great deal from this incident and will use these lessons going forward.

After considering ADM Richardson’s response, we stand by our findings and conclusions.

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<sup>18</sup> The Navy’s Military Personnel Manual (MILPERSMAN) contains the Navy’s military personnel management rules. MILPERSMAN 1611-010, “Officer Performance,” focuses on officer misconduct. This new provision added to the MILPERSMAN by ADM Richardson is a single paragraph at page 9 within 22 pages of guidance on officer misconduct. Before this change, the MILPERSMAN did not address temporary assignment of an officer on the personal staff of a senior Navy official.

#### IV. OVERALL CONCLUSIONS

We did not conclude that ADM Richardson engaged in misconduct in his handling of the complaints against the PAO.

We determined that Navy leadership took action to investigate the allegations during the initial period after learning of the first allegation against the PAO. Considering the separate investigations and the orders directing the PAO to stay away from Complainants 1 and 2, we concluded that the Navy leadership's initial actions from December 15, 2016, through April 26, 2017, to investigate the PAO's alleged misconduct and to determine legally-supportable courses of action were appropriate and expeditious.

However, we concluded that after the investigations and legal reviews were completed, and ADM Richardson made his April 26, 2017, decision to remove the PAO from his position, ADM Richardson did not take sufficient action to ensure that his decision was implemented in a timely manner.

When interviewed in our investigation, ADM Richardson acknowledged that the actions he took after his April 26, 2017, decision to reassign the PAO were not "sufficiently expeditious." ADM Richardson had full authority to remove the PAO from his personal staff at any time. The RLSO recommended [REDACTED], and ADM Richardson decided to reassign the PAO, give him an adverse fitness report, and issue him a NPLOC in April 2017. However, 2 months elapsed before ADM Richardson issued the PAO an adverse fitness report and the NPLOC on June 21, 2017. The PAO remained in place during this time. Then, another 2 months elapsed while awaiting reassignment orders for the PAO before ADM Richardson directed the immediate removal of the PAO from his staff on August 18, 2017. ADM Richardson told us that he "could have done that faster."<sup>19</sup>

We believe that ADM Richardson's failure to ensure that the PAO was removed from his personal staff in an expeditious manner – for 4 months after he decided to reassign the PAO and take administrative action against the PAO – sent the wrong message about how seriously ADM Richardson took the allegations of sexual harassment. We agree with ADM Richardson that he should have acted more expeditiously. We concluded that the reassignment could have, and should have, been done closer in time to ADM Richardson's decision to take administrative action to address the allegations against the PAO.

We consider ADM Richardson's actions to be a performance issue rather than misconduct. We found no applicable standard that required ADM Richardson to remove the PAO from his staff position immediately, or to reassign him to other duties within any specified time period after learning of complaints against him or investigations into his conduct. We concluded that ADM Richardson did not violate a specific Navy or DoD standard in effect at the time, and that his actions or inaction did not constitute misconduct.

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<sup>19</sup> After the PAO's reassignment on August 18, 2017, ADM Richardson's deputy PAO carried out the PAO's duties over the next three months, until a permanent replacement arrived in October 2017.

Finally, we note that as a result of the issues raised during the investigation, the Navy has implemented a new policy that personal staff officers who are the subject of an investigation “should be reassigned temporarily outside the personal staff pending completion of the investigation.”

## **V. RECOMMENDATIONS**

We recommend that the Secretary of the Navy evaluate ADM Richardson’s performance related to the events in this report.

Although the Navy revised Naval Military Personnel Manual 1611-010, we note that the revised version does not include a timeliness standard. Therefore, we recommend that the Navy add a timeliness standard for the reassignment decision and the implementation of that decision.

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