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Description of document: Records related to US Navy Inspector General (OIG) investigations into senior misconduct at Navy, 2012-2013

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Source of document: Freedom of Information Act Request
Department of the Navy
Office of the Naval Inspector General
ATTN: Legal Office FOIA Officer
1254 9th Street, S.E.
Building 172
Washington Navy Yard, DC 20374-5006

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DEPARTMENT OF THE NAVY
NAVAL INSPECTOR GENERAL
1254 9TH STREET SE
WASHINGTON NAVY YARD DC 20374-5006

IN REPLY REFER TO:
5720/2014-000894
Ser OOK1/0401
21 Apr 14

This is an interim response to your January 30, 2014, Freedom of Information Act (FOIA) request for a copy of "IG investigations into senior misconduct at Navy since Oct 1, 2012," as modified by your email on April 17, 2014. We have identified six investigations that respond to your inquiry.

Your request has been processed in accordance with the FOIA and the Privacy Act (PA). Rather than waiting until all the reports have been reviewed for redaction in accordance with the FOIA we will provide copies as we process them. Potential fees associated with this response have been waived.

The redactions made in the reports are based on FOIA Exemptions (b)(6) and (b)(7)(c). FOIA Exemption (b)(7)(c) authorizes the Government to withhold names and other personal information contained in records compiled for investigatory or law enforcement purposes, which, if released, could be considered an unwarranted invasion of personal privacy. FOIA Exemption (b)(6) protects from disclosure material from personnel, medical or similar files, the disclosure of which would also constitute an unwarranted invasion of privacy.

Since your request has been denied in part, you are advised of your right to appeal this determination in writing to:

Department of the Navy
Office of the General Counsel
ATTN: FOIA Appeals - Room 4E635
1000 Navy Pentagon
Washington, DC 20350-1000

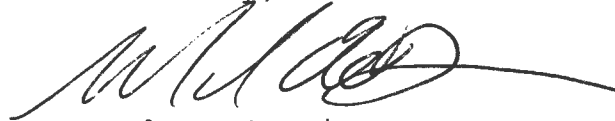
21 Apr 14

To be considered, any appeal you may wish to submit must be postmarked within 60 days from the date of this letter. The enclosed copy of this letter should be attached, along with a statement explaining why your appeal should be granted. It is recommended that the letter of appeal and the envelope both bear the notation, "Freedom of Information Act Appeal."

Two of the responsive reports, 201103025 and 201203467 are posted on the Naval Inspector's General Website and can be found at: <http://www.secnav.navy.mil/ig/Pages/FOIA/ReadingRoom.aspx>. Report of Investigation 201202138 is enclosed with this letter.

If you have any questions concerning this matter, my assistant, Ms. Pat Chase-Ramsey, is familiar with your request and may be of assistance. She may be reached at (202) 433-2222.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. O'Brien', with a long horizontal flourish extending to the right.

Mark A. O'Brien
Assistant Counsel

Enclosures: (1) NAVINSGEN ROI 201202138
(2) Copy of this Letter

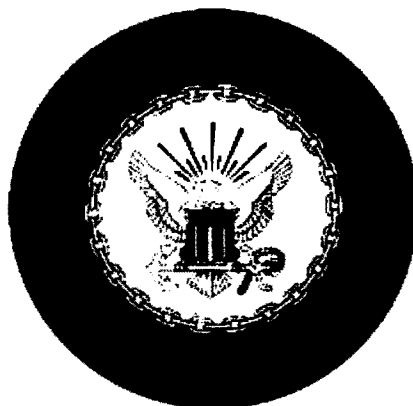
Enclosure (1)

NAVAL INSPECTOR GENERAL

REPORT OF INVESTIGATION

Subj: SENIOR OFFICIAL CASES: 201202138 ALLEGING VIOLATION OF JOINT TRAVEL REGULATIONS BY RADM MARK F. HEINRICH, CAPT (RDML SELECT) DAVID R. PIMPO AND CAPT (RDML SELECT) DONALD L. SINGLETON; 201204067 ALLEGING RADM HEINRICH IMPROPERLY SOLICITED AND RECEIVED MONIES FROM AN OUTSIDE SOURCE; AND 201300498 ALLEGING RADM HEINRICH MADE FALSE OFFICIAL STATEMENTS PURSUANT TO AN OFFICIAL REQUEST

17 June 2013



JMP
J.P. WISECUP
VADM, USN

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Office of the Naval Inspector General

Case Numbers: 201202138, 201204067, and 201300498

Report of Investigation

17 June 2013

Subj: SENIOR OFFICIAL CASES: 201202138 ALLEGING VIOLATION OF JOINT TRAVEL REGULATIONS BY RADM MARK F. HEINRICH, CAPT (RDML SELECT) DAVID R. PIMPO AND CAPT (RDML SELECT) DONALD L. SINGLETON; 201204067 ALLEGING RADM HEINRICH IMPROPERLY SOLICITED AND RECEIVED MONIES FROM AN OUTSIDE SOURCE; AND 201300498 ALLEGING RADM HEINRICH MADE FALSE OFFICIAL STATEMENTS PURSUANT TO AN OFFICIAL REQUEST

Preliminary Statement

1. On 29 June 2012, the Naval Inspector General (NAVINGEN) received an anonymous complaint that RADM Mark F. Heinrich, SC, USN, Commander, Naval Supply Systems Command (NAVSUP) and Chief of the Supply Corps, abused his position and wasted government resources in conjunction with his official travel. The complainant identified five Temporary Duty Travel (TDY) trips that RADM Heinrich made to various destinations in April-June 2012 and provided detailed information and questions about the necessity for each trip. On one trip to the United Kingdom (UK), RADM Heinrich was accompanied by CAPT (RDML Select) David R. Pimpo, SC, USN, and CAPT (RDML Select) Donald L. Singleton, SC, USN. At the time they traveled to UK, CAPT Pimpo was the NAVSUP Assistant Commander for Supply Operations and Logistics and CAPT Singleton was the NAVSUP Chief of Staff.

2. According to the complainant, the trip to UK was more about three very close friends celebrating the recent selections of CAPT Pimpo and CAPT Singleton for promotion to Flag Rank than conducting official business with NAVSUP's Royal Navy (RN) counterparts in the UK. Regarding the other four trips identified in the complaint, trips RADM Heinrich made without the other two officers, the complainant stated that each was its own example of RADM Heinrich's tendency to abuse his official travel for purely personal reasons. Further, the complainant stated that this three month "snapshot" was typical of all the

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other official travel RADM Heinrich completed since assuming command at NAVSUP. (201202138)

3. The complainant also alleged that RADM Heinrich improperly influenced the officer assignment process for his former ~~b6 b7c~~ ~~b6 b7c~~, SC, USN, (July ~~b6 b7c~~ - June ~~b6 b7c~~) and that he approved her transfer to a "non-existent billet in ~~b6 b7c~~ state of Texas." The complainant stated that it was well known that ~~b6 b7c~~ intended to resign from the Navy after she completed her next tour of duty but RADM Heinrich arranged for her to go to an assignment at her preferred separation location as a favor. (201202138)

4. Subsequent to the original travel and officer detailing complaint, NAVINSGEN received two more anonymous complaints that raised additional allegations against RADM Heinrich and another allegation against CAPT Pimpo. On 27 November 2012, it was alleged that RADM Heinrich solicited and received funds from the "non-profit San Diego Supply Corps Association . . . to pay out of pocket expenses for his Command and military social events at his personal residence." CAPT Pimpo was the President of the association identified by the complainant. He was alleged to have been complicit in providing association funds to RADM Heinrich. (201204067)

5. On 1 February 2013, it was alleged that RADM Heinrich "intentionally [submitted] a false and misleading justification to SECNAV for approval to frock two Navy Supply Corps Officers . . . under his command" Also, on 1 February 2013, DoD IG referred a fourth anonymous complaint dated 15 November 2012, to NAVINSGEN for information. This fourth complaint alleged that RADM Heinrich abused his position and "bypassed the CNO-directed Navy Command Board process in order to personally approve two [unqualified] officers for assignment to Command" The complainant stated that RADM Heinrich's approval of unqualified officers to go to command positions was an "act of favoritism" and "unfair to other officers who were not selected" for command by the selection board process. (201300498)

6. We formed the following allegations for investigation:

Allegation #1: That RADM Heinrich, CAPT Singleton, and CAPT Pimpo, violated various provisions of the Joint Federal

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Travel Regulations, Volume 1, Uniformed Service Members (JFTR), related to their official travel to the UK on 18-25 April 2012.

Conclusion: The allegation is substantiated.

Allegation #2: That RADM Heinrich violated various provisions of the JFTR related to his official travel to the University of Kansas (KU) on 26-29 April 2012.

Conclusion: The allegation is substantiated.

Allegation #3: That RADM Heinrich improperly accepted a gift from a prohibited source in violation of 5 C.F.R. § 2635.202, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart B, Gifts from Outside Sources.

Conclusion: The allegation is substantiated.

Allegation #4: That RADM Heinrich improperly used a subordinate's official time in violation of 5 C.F.R. § 2635.705, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart G, Misuse of Position.

Conclusion: The allegation is substantiated.

Allegation #5: That RADM Heinrich violated various provisions of the JFTR related to his official travel to Philadelphia, PA, and Dallas, TX, on 1-5 May 2012.

Conclusion: The allegation is substantiated.

Allegation #6: That RADM Heinrich violated various provisions of the JFTR related to his official travel to Norfolk, VA and Washington, DC, on 6-13 May 2012 and failed to document his use of annual leave during the same period.

Conclusion: The allegation is substantiated.

Allegation #7: That RADM Heinrich violated various provisions of the JFTR related to his official travel to Washington, DC and Richmond, VA, on 30 May - 3 June 2012 and failed to document his use of annual leave during the same period.

Conclusion: The allegation is substantiated.

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Allegation #8: That RADM Heinrich violated various provisions of the JFTR related to his official travel to Newport, RI, on 7-12 June 2012.

Conclusion: The allegation is substantiated.

Allegation #9: That RADM Heinrich failed to act impartially with respect to the detailing of ~~b6 b7c~~ SC, USN, from her assignment as his ~~b6 b7c~~ to her current duty assignment in Ft Worth, TX, in violation of 5 C.F.R. § 2635.101, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart A - General Provisions.

Conclusion: The allegation is not substantiated.

Allegation #10: That RADM Heinrich improperly solicited and received funds from the San Diego Chapter of the Navy Supply Corps Officers' Foundation in violation of 5 C.F.R. § 2635.202, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart B, Gifts from Outside Sources.

Conclusion: The allegation is not substantiated.

Allegation #11: That RADM Heinrich made false official statements when he requested that two officers assigned at NAVSUP Headquarters be frocked to the grade of Captain in violation of the Uniform Code of Military Justice (UCMJ), Article 107 - False Official Statements.

Conclusion: The allegation is not substantiated.

Allegation #12: That RADM Heinrich failed to act impartially with respect to the assignment of officers to Supply Corps Commander Command Ashore positions in violation of 5 C.F.R. § 2635.101, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart A - General Provisions.

Conclusion: The allegation is not substantiated.

7. To address these allegations, the report that follows is divided into five major subsections:

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- a. Official Travel will address the allegations made about RADM Heinrich's use of official travel. A total of six periods of TDY are examined. Under this subsection, we also examine whether or not CAPT Pimpo and CAPT Singleton violated travel regulations when they accompanied RADM Heinrich to the UK.
- b. Detailing of [REDACTED] will examine whether or not RADM Heinrich's actions in support of a follow-on assignment for his former [REDACTED] were proper.
- c. Supply Corps Foundation Funding will examine whether or not RADM Heinrich improperly solicited or received funds from the San Diego Chapter of the Navy Supply Corps Foundation.
- d. Frocking of Subordinates examines RADM Heinrich's actions related to the frocking of two subordinate officers.
- e. Commander Command Ashore Assignments will examine whether or not RADM Heinrich abused his position and placed two unqualified officers into command positions.

Official Travel

Background

8. RADM Heinrich became Commander, NAVSUP and the 46th Chief of Supply Corps on July 22, 2011. Before reporting to his current command assignment, he served as Commander, NAVSUP Global Logistics Support (GLS) headquartered in San Diego, CA.

9. CAPT Pimpo is Commander, Defense Logistics Agency (DLA) Land and Maritime, Columbus, OH. He assumed command of DLA Land and Maritime on 3 July 2012. Before reporting to his current assignment, CAPT Pimpo served at NAVSUP as RADM Heinrich's Assistant Commander, Supply Operations and Logistics Policy from July 2011 until June 2012. Prior to reporting to NAVSUP Headquarters, CAPT Pimpo was Commanding Officer, Fleet Logistics Center (FLC), San Diego. While in command there, he reported to RADM Heinrich while RADM Heinrich was Commander, NAVSUP GLS.

10. CAPT Singleton is assigned to Commander, U.S. Pacific Fleet (COMPACFLT). He assumed duties as COMPACFLT Deputy Chief of

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Staff for Logistics, Fleet Supply and Ordnance in June 2012. Before reporting to COMPACFLT, CAPT Singleton served at NAVSUP as RADM Heinrich's Chief of Staff from September 2011 until May 2012. Prior to reporting to NAVSUP Headquarters, CAPT Singleton was Commanding Officer, FLC, Norfolk. While in command there, he also reported to RADM Heinrich while RADM Heinrich was Commander, NAVSUP GLS in San Diego.

11. The complainant alleged that there was "an extensive perception by many" that RADM Heinrich used his official position for his own personal gain and that of his spouse. The complainant further alleged that RADM Heinrich travels "for most of every calendar month and is only at NAVSUP for approximately 2-3 business days per month." The complainant stated that RADM Heinrich frequently arranged his official travel to include weekends and thereby enjoyed two days off at government expense.

12. NAVINSGEN reviewed Defense Travel System (DTS) records and found that RADM Heinrich went on official travel 49 times in his first twelve months in command of NAVSUP. He was away from NAVSUP headquarters on TDY for a total of 252 days in that first twelve-month period. Most of the trips he made were to Washington, DC, for regularly scheduled meetings at the Pentagon or to DLA Headquarters at Ft Belvoir, VA. Washington, DC, was also frequently used as the starting point for many of his follow-on travel requirements. Washington, DC, area airports, Washington Dulles International and Ronald Reagan National, offered more convenient and typically less expensive air fare for his official travel than could otherwise be arranged for him flying from and returning to the local airport nearest to NAVSUP Headquarters, the regional airport in Harrisburg, PA.

13. For routine trips from NAVSUP to Washington, DC and the National Capitol Region, RADM Heinrich typically rode with his Flag Aide in a government vehicle or a rental car as the particular trip required. The government vehicle was most often used for trips from NAVSUP Headquarters to Washington, DC and returning to Mechanicsburg. If, however, Washington, DC, was the first stop of a longer trip, a one-way rental was commonly used for transport from Mechanicsburg to Washington, DC and the rental car would be dropped off at the departure airport. Using a rental car in this way avoided having to leave the government vehicle at the departure airport.

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14. NAVINSGEN examined the general practices of the NAVSUP front office staff, the Chief of Staff, Flag Aide, Executive Assistant (EA) and Flag Writer, and the support they provided to RADM Heinrich in support of his official travel. Based on their testimony, we learned that most of RADM Heinrich's travel requests and associated travel claims were entered into DTS by the Flag Aide. The EA was typically the DTS Approving Official (AO) and the one who authorized travel requests and approved travel claims for payment after those documents were entered into DTS for RADM Heinrich by his Flag Aide. On infrequent occasions when the EA was not available to perform AO duties, the Chief of Staff or another official at NAVSUP with DTS administrator privileges would approve travel documents in DTS. Additionally, on those occasions that RADM Heinrich combined leave with his official travel, the Flag Writer was responsible for entering RADM Heinrich's electronic leave requests in the Navy Standard Integrated Personnel System (NSIPS) on his behalf. While the JFTR permits a traveler to take leave from a TDY location, there is no electronic interface between DTS and NSIPS. For this reason, separate administrative action must be taken by the traveler, or someone designated by the traveler, to enter their leave taken in conjunction with TDY into NSIPS in order for it to be properly documented and charged to the traveler's personal leave account.

15. Regarding DTS support provided to RADM Heinrich, while it is permissible for someone other than the traveler to enter a travel request or travel voucher into DTS for the traveler, the individual doing the data entry or "T-entering"¹ documents on the traveler's behalf must be designated in writing. NAVINSGEN found no record that [REDACTED] or anyone else at NAVSUP was designated in writing to T-enter travel requests or travel vouchers into DTS for RADM Heinrich.

¹ According to the Defense Travel Management Office website, a Non-DTS Entry Agent is a military member, DoD employee, or contractor designated by local command authority to input and digitally sign trip requests and claims for reimbursement in DTS on behalf of travelers who do not have reasonable access to DTS. A Non-DTS Entry Agent must be appointed in writing. Responsibilities include: (1) Receive a manually prepared and signed paper travel voucher (DD Form 1351-2) with all receipts from the traveler; (2) Fax electronically or upload the traveler's manually prepared and signed DD Form 1351-2 and all required receipts into DTS; and (3) Sign vouchers on behalf of the traveler by selecting the "T-entered" stamp instead of the "signed" stamp from the document status list.

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16. Moreover, witness testimony established that it was common practice for RADM Heinrich to allow his Flag Aides to T-enter his travel voucher and then upload it into DTS without him first reviewing or signing his DD Form 1351-2 travel voucher claim form. Many of the vouchers we examined during our records review appeared to have been auto-penned with RADM Heinrich's signature. b6 b7c k2 testified about her role in processing RADM Heinrich's travel claims and she provided a written statement about her use of the auto-pen. b6 b7c k2 stated that after a voucher for RADM Heinrich's travel had been created, "the front office staff had [RADM Heinrich's] permission to auto-pen [his claims]."

17. RADM Heinrich testified that he did not regularly review or sign his travel claims prepared by his Flag Aides. Although he required an initial probationary period during which time he reviewed his travel claims in detail with his Flag Aides, as soon as the Flag Aides demonstrated their proficiency completing his travel claims to his satisfaction, RADM Heinrich allowed the Flag Aides, b6 b7c k2 and her relief, b6 b7c k2, to file his claims in DTS without his personal review.

18. On 29 February 2012, b6 b7c k2, who had been the NAVSUP Enterprise b6 b7c k2 b6 b7c k2, retired unexpectedly. b6 b7c k2 had 26 years experience working government travel programs. According to b6 b7c k2, NAVSUP's Work Force Management b6 b7c k2 and b6 b7c k2 immediate supervisor until she retired, b6 b7c k2 had been the primary travel reviewer and approver looking at RADM Heinrich's travel requests and claim vouchers. b6 b7c k2 unexpected departure left the NAVSUP Travel Management Office without a fully qualified and experienced employee to take over her travel program duties. Temporarily, b6 b7c k2 positional duties were accomplished by other NAVSUP employees who had little or no experience reviewing DTS vouchers. b6 b7c k2 said it took until November 2012 to hire a permanent, fully qualified replacement for b6 b7c k2. The five periods of RADM Heinrich's official travel that were questioned by the complainant occurred during the transition period between b6 b7c k2 retirement in February 2012 and the hiring of a permanent, fully qualified replacement, in November 2012. This investigation is focused on these five periods of TDY and a sixth period of TDY that came to NAVINSGEN's attention during our review of RADM Heinrich's official DTS records.

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Official Travel to London & UK, April 18-25, 2012

19. **Allegation #1:** That RADM Heinrich, CAPT Singleton, and CAPT Pimpo, violated various provisions of the JFTR related to their official travel to the UK on 18-25 April 2012.

Findings of Fact - Allegation #1

20. RADM Heinrich, CAPT Pimpo, and CAPT Singleton went on official travel to the UK and met with their RN and Royal Fleet Auxiliary counterparts and other U.S. and British officials on 19-25 April 2012. For this trip, they were accompanied by their b6 b7c k2 .²

Primary Purpose of Travel - Official or Personal

21. RADM Heinrich, CAPT Pimpo and CAPT Singleton's itinerary in conjunction with their travel to UK was as follows:

Day & Date (2012)	Activity (all times are local)
Wednesday, 18 April	Departed Washington Dulles International Airport @ 2152
Thursday, 19 April	Arrived London Heathrow International Airport @ 1010; attended briefings at British Ministry of Defense 1400-1600; hosted dinner with RN counterparts
Friday, 20 April	Attended briefs at U.S. Embassy in London 0915-1400; remainder of day was free
Saturday, 21 April	Free Day
Sunday, 22 April	Ate lunch at b6 b7c k2 residence; traveled to Bath, UK
Monday, 23 April	Visited Defense Equipment & Support, Abby Wood, Bristol, UK, 0800-1400; traveled to RN Base (HMS Raleigh), Cornwall, UK

² This period of TDY was actually part of a longer period of TDY that began on 15 April 2012 in Washington, DC, and concluded on 29 June 2012 when RADM Heinrich returned to Mechanicsburg, PA. We focused our attention in this first allegation on the eight-day period identified by the complainant.

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Tuesday, 24 April	Visited various RN training facilities at HMS Raleigh 0830-1500; traveled to HMS Nelson, Portsmouth, UK
Wednesday, 25 April	Made official calls at RN Command Headquarters; toured Naval Base Portsmouth and HMS HURWORTH (M39); visited BAE Systems Shipbuilding; traveled to London
Thursday, 26 April	Departed London Heathrow International Airport @ 0755 and arrived Washington Dulles International Airport @ 1120

22. The complainant alleged that RADM Heinrich had "a very close personal friendship and relationship" with CAPT Pimpo and CAPT Singleton. The complainant stated that both officers worked for RADM Heinrich before they were assigned together at NAVSUP. The complainant also stated that the three subjects' ~~SSNs~~ were close friends. The complainant further stated:

Many military and civilian perceive this official trip was no more than a taxpayer financed vacation to London, England, for six close friends to celebrate the recent selections to flag prior to [CAPT] Singleton detaching to Hawaii (in May 2012) and [CAPT] Pimpo detaching to Columbus (in June 2012). In summary, even though many aspects [of] this trip may be "technically legal" (since RADM Heinrich personally directed approval for this trip), would this trip stand up to "The Washington Post Test"

23. RADM Heinrich, CAPT Pimpo, and CAPT Singleton testified about their personal and professional relationship with each other. CAPT Pimpo and CAPT Singleton testified that they both served under RADM Heinrich in two senior-subordinate relationships. They also stated that their individual interactions with RADM Heinrich outside the workplace were generally limited to command functions. They did not regularly interact with RADM Heinrich socially either on an individual basis or as a couple with their [REDACTED]. They did not regularly eat dinner together, play golf, vacation, or attend family functions at each other's home or attend special events, e.g., weddings, for their respective family members. Each officer viewed the other as a professional acquaintance. They did not consider themselves to have a "close personal friendship" as the complainant described.

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24. The complainant further alleged that RADM Heinrich's predecessor in command at NAVSUP, b6 b7c [REDACTED], SC, USN (Retired), made similar trips to London, "however, they covered only a few days and without other NAVSUP senior officers."

25. b6 b7c k2 [REDACTED] is a government civilian employee at NAVSUP Weapon Systems Support (WSS) Command in Mechanicsburg, PA. She was previously employed at NAVSUP Headquarters as the Protocol Officer starting in 2003 until April 2012. b6 b7c k2 [REDACTED] testified about b6 b7c [REDACTED] travel to the UK. She recalled that when b6 b7c [REDACTED] traveled to the UK, his b6 b7c k2 [REDACTED] and his b6 b7c k2 [REDACTED] for Supply Operations and Logistics, the same positions held by CAPT Singleton and CAPT Pimpo respectively, joined him on TDY. She also recalled that on at least one of the trips b6 b7c [REDACTED] made to the UK during his tour as Commander, NAVSUP, b6 b7c [REDACTED] b6 [REDACTED] accompanied him. b6 b7c k2 [REDACTED] did not recall if either of the other two officer's b6 b7c k2 [REDACTED] may have traveled to the UK with either of the officers that accompanied b6 b7c [REDACTED] on his travel to the UK.

26. Regarding his reason for both CAPT Singleton and CAPT Pimpo to travel with him to UK, RADM Heinrich testified:

Lee [Singleton] was always going to go because the [UK] b6, b6 b7c k2 [REDACTED], worked for him on the Joint Staff. Lee headed up the International Division on the Joint Staff, and b6 b7c [REDACTED] worked for him. So Lee was always going to go because, frankly, you know, that's part of the strategic relationship, and Lee was a Flag Select.

David [Pimpo], I think, was probably the second addition, and when David went, I think I took the Aide off, but David being a Flag Select, having the British Naval Officers assigned to his staff, [REDACTED] b6 b7c k2 [REDACTED] [RN,] . . . I think that was a second - - that was sort of a -- not a second thought, but it was the second decision to be made.

27. CAPT Singleton testified that RADM Heinrich agreed to add CAPT Pimpo to the travel party for the UK trip as a result of his recommendation that the NAVSUP Operations Officer accompany them. CAPT Singleton stated:

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As the Chief of Staff, I was thinking, you know, "I need to grow the officer as well as support the command. And having the Operations Officer understand more about our ties with, you know, our biggest ally, then, you know, perhaps he should go as well." So I suggested it to Admiral Heinrich that David Pimpo go, and he agreed.

As a consequence to that, I said, "And maybe since I'm going, and David's going, we should take [REDACTED] off of the trip." And so, we pulled her off and put him on.

28. About his justification for going on official travel to UK, CAPT Pimpo said it was ultimately "Admiral Heinrich's call" but he went "because as the Operations Officer many of the things that we were going to . . . [look] at were under my purview as the Operations Officer."

29. We questioned the subjects and [REDACTED] b6 b7c k2 about whether or not the trip to UK was initiated by RADM Heinrich or in response to an invitation from some UK official. [REDACTED] testified that the trip was in response to an invitation from RAdml Steel and that "there [had] been a long-standing relationship between the Logistics Branch of the RN and the Supply Corps of the U.S. Navy." He further testified:

And with visits conducted, I think historically every year with the [REDACTED] b6 b7c, [REDACTED] b6 b7c -- he went back to the UK.

And the UK had in my time conducted about three or four visits to NAVSUP, or on the invitation of NAVSUP to attend conferences, and including [REDACTED] b6 b7c k2, [REDACTED] b6 b7c.

And so this was sort of the opportunity that we found in the program to get RADM Heinrich across to the UK, as a sort of the exchange that we had of visit programs back and forth.

30. RADM Heinrich and CAPT Singleton said their trip had been at the invitation of the RN. CAPT Pimpo testified that the trip was "a professional [exchange] to talk to our counterparts about several issues that we had been working jointly." CAPT Pimpo

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said that the trip to UK was made in response to an invitation from the RN but he did not recall who specifically in the RN made the invitation. He said the projects of interest to NAVSUP and his reasons for going on the trip were related to:

the Joint Strike Fighter . . . a joint venture . . .
with [the RN] . . . their foray into littoral combat
ship type . . . for us to be able to . . . review how
they do their training, how they train their cooks,
and . . . to observe a new mock-up that they have for
doing underway replenishments

Use or non-use of Contract Air Fare

31. RADM Heinrich, CAPT Pimpo and CAPT Singleton selected the same non-contract fare for their flight to the UK. Contract air fare was available at the time their respective flight reservations were made and, in accordance with the JFTR, contract air fare was required to be used if it was available and met mission requirements. All three subjects testified that they did not recall that they selected a non-contract air fare or that the cost of their air fare to the UK was more expensive than an available contract fare. RADM Heinrich's air fare cost an additional \$194; CAPT Pimpo's and CAPT Singleton's fares were an additional \$337.50 for each traveler.

32. RADM Heinrich's travel claim contained the following justification statement as the reason why he selected a non-contract air fare from Washington, DC, to London: "Does not meet mission requirements. Mission essential to meet official meeting timeline. Last meeting of the day on 4/18 ends at 1930 in Washington, [DC]."

33. RADM Heinrich testified about his last meeting on 18 April. He attended a Navy Federal Credit Union (NFCU) Annual Meeting at the NFCU building in Vienna, VA. The meeting was scheduled to end at 1900. RADM Heinrich testified that he was a voluntary member of the NFCU Board of Directors along with several other Navy Flag Officers. He stated that his attendance at the Annual Meeting was not an official duty. His last official meeting was earlier that same day in the Pentagon and it concluded at 1630 on the day of departure according to his calendar.

34. CAPT Singleton's travel claim contained the same justification statement that appeared in RADM Heinrich's travel

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claim. CAPT Singleton testified that he remained in his office at NAVSUP headquarters, conducting normal business, until it was time for him to drive to Washington Dulles International Airport and join the rest of the travel party. He said it was his opinion that leaving work earlier in the day simply to make a contract flight would send the wrong signal to NAVSUP co-workers and staff. CAPT Singleton testified:

If I could do what I'm supposed to do, do my job, go to the meetings, take care of my team, and then head to the airport after work, I would consider that to be a slightly better use of time.

35. CAPT Pimpo's travel claim contained a one-word justification statement regarding his use of non-contract fare for the flight to London; it simply stated: "Authorized." CAPT Pimpo testified that he remained at NAVSUP headquarters until it was time for him to drive to Washington Dulles International Airport and meet his wife who was flying in from their home in California for the trip to the UK. CAPT Pimpo also testified that he did not question the flight arrangements that had been made for him; he said that the "flights were selected based on what Admiral Heinrich decided he wanted us to do."

36. NAVINSGEN noted similar discrepancies in the subjects' justifications for selecting a non-contract return fare from London back to Washington, DC. RADM Heinrich and CAPT Singleton had justifications that indicated they were going to a meeting in the Pentagon at 1300 on the day of arrival. RADM Heinrich and CAPT Singleton testified that they did not go to a meeting after they landed at Washington Dulles International Airport. RADM Heinrich remained at the airport and checked in for the flight he took later that same day to Kansas City International Airport. CAPT Singleton returned to Mechanicsburg.

37. The justification statement in CAPT Pimpo's travel claim regarding his use of a non-contract return flight simply stated "authorized." Leave documents obtained by NAVINSGEN showed that after he landed at Washington Dulles International Airport, CAPT Pimpo departed on three days leave.

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Claims Exceeding Per Diem

38. RADM Heinrich, CAPT Pimpo, and CAPT Singleton were reimbursed for actual expenses above the maximum rate for lodging per diem during their first three nights stay in London. RADM Heinrich and CAPT Singleton claimed and were reimbursed approximately \$404 against a maximum lodging per diem of \$319.³

39. CAPT Pimpo claimed and was reimbursed a slightly higher actual expense amount for his lodging per diem during the first three nights stay in London; he received \$425.65 against a maximum lodging per diem of \$319. CAPT Pimpo's slightly higher amount was calculated in error when the total charge for his three day hotel bill, that included the cost of laundry services billed to his hotel room, was simply divided by three.

40. The subjects did not recall having stayed at a hotel that cost more than the maximum lodging per diem. They testified that they relied upon [REDACTED] to reserve rooms within per diem limits. b6 b7c [REDACTED] testified that he made all their accommodation and transportation arrangements and he did not realize before or after the TDY that any of their lodging cost more than the maximum lodging per diem.

41. DTS records and testimony from the various witnesses showed that RADM Heinrich, CAPT Pimpo, and CAPT Singleton paid for all the travel costs associated with their respective spouse. Moreover, the subjects did not claim any actual expenses attributable to their spouse when they submitted their respective travel claims for reimbursement.

42. About the travel costs incurred by subjects that were above maximum per diem limits and the higher cost of air fare incurred when the subjects did not use the available contract air fare, [REDACTED], RADM Heinrich's b6 from b6 b7c [REDACTED] until b6 b7c [REDACTED] testified:

³ Per JFTR, Paragraph U4129, the maximum lodging per diem in a foreign country includes the cost of the lodging (room rate) and any associated lodging tax; these costs are not separately claimed expenses. By comparison, maximum lodging per diem in the U.S. or a U.S. Territory is the maximum permissible room rate alone for the location visited. Any lodging taxes paid by the traveler pursuant to State or local government taxes are in addition to the maximum lodging per diem rate in a U.S. or a U.S. Territory and are, therefore, separately claimed non-mileage expenses.

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I do not remember these excessive charges. Normally, DTS will automatically signal for such an error prompting action to be taken. Our [REDACTED], [REDACTED], upon return from this trip, entered all receipts into DTS. Upon her data entry and submission, a DTS analyst would then review, comment and work out any anomalies or errors with the person filing the claim. The next step is that the claim would come to me for my review. To the best of my knowledge, upon my review, DTS did not signal any errors. This led me to believe that the Flag [Aide's] work and DTS analysts had provided an accurate claim and any issues had been resolved. When [the investigator] showed me a sheet with 17 DTS errors for this one claim, my viewing was the first I had seen on these errors. I asked [the investigator] for a description of each error as well so that I could better answer the questions. No one from our DTS organization notified us of the additional charges and the claim was ultimately approved.

In the months prior in planning this trip, [REDACTED] assured me that all hotels identified for the trip were within per diem limits. Further, I believe these three nights are an anomaly as the other UK hotels were within or below per diem per our planning. Lastly, I am quite certain these anomalies will exist on the other two admiral's (Singleton and Pimpo's) claims. Therefore, this would be a "systematic" problem and not an intentional or neglectful act. Again, DTS analysts never approached me concerning these errors and my working relationship with them was extremely amicable.

43. Although [REDACTED] stated he did not recall any line items related to RADM Heinrich's travel voucher for this trip having been flagged by DTS, the flags were present in the official DTS records we reviewed. These same records showed [REDACTED] was the [REDACTED] who approved RADM Heinrich's claim for payment.

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Receipt of Full Meal Rate on Days where Meals were Provided at
No-cost to the Traveler

44. Per JFTR, Annex G, if a traveler receives two or more meals in a given day they are not entitled to be reimbursed the full meal rate for that day. Witness testimony established that some meals were provided to subjects without cost on days they received the full meal rate. The itinerary on its own, however, did not identify a day when more than one meal was provided without charge to the subjects and their recollection of the itinerary did not make clear if they received more than one meal on any given day they claimed and were reimbursed the full meal rate. Accordingly, we did not identify a meal rate violation for any of the subjects.

Emergent Allegation - Misuse of Government Funded Rental Vehicle
for Spouse Travel

45. The complainant alleged that b6 b7c k2 was "directed by RADM Heinrich to break away from the other three officers to provide b6 b7c k2 programs (i.e., tour guide services) to the three military b6 b7c k2 on Tuesday and Wednesday, [24-25 April]."

46. On 24 April, the TDY party was in Cornwall. While the three subjects attended meetings at various RN facilities during the day, their b6 b7c were transported in the government funded rental car, without the subjects being present, to the next city on their itinerary, Portsmouth. The three subjects joined their b6 b7c later that evening, having taken separate transportation provided by the RN to Portsmouth.

47. b6 b7c k2 testified that the only time he was alone with the three b6 b7c k2 was on 24 April during their three-hour car ride from Cornwall to Portsmouth. b6 b7c k2 said that apart from driving the b6 b7c from Cornwall to Portsmouth, he did not provide or arrange any unique services for them.

Use of Government Travel Credit Card (GTCC)

48. RADM Heinrich and CAPT Singleton used their respective GTCC to purchase air fare and lodging accommodations in conjunction with their travel to the UK as required by the JFTR. CAPT Pimpo used his GTCC to purchase his air fare and all but one nights lodging accommodations in the UK. On 25 April, CAPT Pimpo used a personal credit card by mistake when he paid for his lodging

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in Portsmouth and his error was documented in the travel voucher he submitted.

Extra Days before or after TDY

49. There were no free days, before or after the TDY, during which the subjects collected per diem or incurred costs paid by the government. RADM Heinrich, CAPT Pimpo and CAPT Singleton arrived in the UK on Thursday morning, 19 April. They went from the airport to their hotel, changed clothes, and proceeded to their initial round of meetings with RN officials at the Ministry of Defense. That evening RADM Heinrich hosted an official representation dinner in honor of b6 b7c k2 [REDACTED], and six other RN senior officers.^{4,5} The subjects concluded their official duties in the UK on Wednesday afternoon, 25 April, in Portsmouth and traveled by car back to London. They departed the UK through London Heathrow International Airport the following morning at 0755 and arrived at Washington Dulles International Airport at 1120 the same day.

Accounting for leave

50. The subjects did not take any leave in conjunction with their TDY to London and the UK. CAPT Pimpo, however, departed on leave after he returned to Washington, DC, from London. His leave was properly deducted from his leave account.

Other administrative errors noted by the investigation

51. RADM Heinrich did not create or digitally sign his travel claim in DTS. b6 b7c k2 [REDACTED] created it and then T-entered the document in DTS on his behalf. The claim was subsequently reviewed and approved for payment by b6 b7c k2 [REDACTED], RADM Heinrich's EA.⁶

⁴ The dinner RADM Heinrich hosted was paid for with Official Representation Funds (ORF). In accordance with Paragraph 7 of SECNAVINST 7042.7K, the required ratio of authorized guests receiving ORF courtesies to U.S. personnel (which includes the U.S. [REDACTED]) was met. Parties of fewer than 30 persons require a minimum of 20 percent of invitees expected to attend to be authorized guests. In this case, there were seven in the U.S. party and seven in the RN party.

⁵ Member of the Most Excellent Order of the British Empire (MBE).

⁶ DTS is a fully integrated, automated, end-to-end travel management system that enables DOD travelers to create authorizations and reservations, receive

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52. CAPT Pimpo did not create or digitally sign his travel claim in DTS. CAPT Pimpo testified that he did not travel very often while assigned at NAVSUP and, therefore, relied upon b6 b7c k2, his b6 b7c k2, to enter his travel claim in DTS for him. Although he did not create or digitally sign his travel claim in DTS, CAPT Pimpo signed his original DD Form 1352-2 and it was uploaded into DTS with his required receipts in accordance with JFTR and DTS Standard Operating Procedures. His travel claim moved through the normal DTS review process. b6 b7c k2 approved CAPT Pimpo's travel claim for payment.

53. CAPT Singleton did not create his travel claim in DTS. Rather, he relied upon b6 b7c k2 to enter his travel claim for him. Afterwards, CAPT Singleton reviewed and digitally signed his travel claim and it went through the DTS review process. CAPT Singleton also signed his original DD Form 1352-2 and it was uploaded with his required receipts in accordance with JFTR and DTS Standard Operating Procedures. b6 b7c k2 approved CAPT Singleton's travel claim for payment.

Applicable Standards - Allegation #1

54. JFTR Chapter 2, Part A: General, states in part:

U2000 OBLIGATION TO EXERCISE PRUDENCE IN TRAVEL

A. General. A traveler must exercise the same care and regard for incurring GOV'T paid expenses as would a prudent person traveling at personal expense.

55. JFTR Chapter 2, Part G: GTCC Use, states in part:

approvals, generate travel vouchers, and receive a split disbursement between their bank account and the Government Travel Charge Card. The traveler can access DTS via a single web portal available 24 hours a day, seven days a week. DTS permits duly authorized personnel to input and digitally sign or T-enter requests and claims on behalf of a traveler who does not have reasonable access to DTS. In such cases, the traveler manually prepares and signs their DD Form 1351-2 (claim voucher) and it should be uploaded into DTS with the required travel expense receipts.

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U2500 DoD POLICY

A. General. It is the general policy of DoD that the GTCC be used by DoD personnel to pay for all costs incidental to official business travel, including travel advances, lodging, transportation, rental cars, meals and other incidental expenses, unless otherwise specified...

U2515 GTCC USE AND RESTRICTIONS

A. General. Charging personal travel expenses is GTCC misuse. A DoD traveler who misuses the GTCC is subject to administrative and/or disciplinary action.

56. JFTR Chapter 4, Part A: TDY Travel, states in part:

U4000 JUSTIFICATION

1. A TDY assignment may be authorized/approved only when necessary for official GOV'T business.
2. Travel must be planned and scheduled to accomplish multiple objectives with minimum non-official disruptions and transportation delays whenever possible.
3. Service procedures (see par. U2020) must be in place to evaluate TDY requests to ensure that the:
 - a. Purpose is essential official business in the GOV'T's interest;
 - b. Objective cannot be satisfactorily accomplished less expensively by correspondence, teleconferencing, web-based communications, or other appropriate means (NOTE: This completed consideration must be certified in a statement on the order);
 - c. Duration is no longer than required to complete the official TDY assignment. The traveler is financially responsible for all non-official expenses resulting ICW official TDY travel; and

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d. Number of persons assigned is held to the minimum. The number of eligible traveler(s) selected for a TDY must be based on official necessity and travelers' qualifications to best perform the mission. TDY assignment must not consider or be based on a person/persons who is not authorized to travel at GOV'T expense accompanying or joining an eligible traveler ICW the official travel...

57. JFTR Chapter 4, Part B: Per Diem, states in part:

U4129 TDY LODGING

A. General

1. The lodging component of per diem establishes the maximum per diem amount the GOV'T will reimburse to the traveler for lodging. It does not limit, in any manner, what a lodging facility may charge to a traveler.
2. The amount allowed for lodging is the expense actually incurred or the maximum TDY locality lodging ceiling, whichever is less.
3. Lodging reimbursement may not exceed actual lodging costs or the applicable maximum amount unless an AEA is authorized/approved.
4. A traveler must adhere to the prudent traveler rule for official travel funded by the GOV'T. See par. U2010.

. . .

D. Lodging Tax

3. Foreign Area. Lodging tax in a foreign area is:
 - a. Included in the locality per diem lodging ceiling, and
 - b. Not a reimbursable expense (APP G) when per diem/AEA is paid.

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58. JFTR Chapter 4, Part C: Actual Expense Allowance (AEA), states in part:

U4205 JUSTIFICATION

An AEA may be authorized/approved for travel when the per diem rate is insufficient for part, or all, of a travel assignment because:

1. Actual and necessary expenses (especially lodgings) exceed the maximum per diem...

59. JFTR Appendix O, Temporary Duty (TDY) Travel Allowances, states in part:

T4030 GETTING THERE AND BACK (TRANSPORTATION ALLOWANCES)

B. Commercial Transportation. The AO may, under certain conditions, authorize the CTO to arrange other than contract city-pair flights ... when needed to fulfill a documented mission requirement....

T4040 LIVING EXPENSES (PER DIEM)

4. Commercial Lodging Reimbursement

a. Commercial lodging reimbursement is based on the single occupant rate, up to the TDY site or stopover location maximum.

b. If only lodgings that cost more than the published maximum rate are available, the AO may authorize/approve the higher amount

Analysis - Allegation #1

60. The complaint questioned whether or not there was an official basis for approving this trip. The complainant expressed a belief that the trip was conceived by RADM Heinrich as an opportunity for close friends, RADM Heinrich, CAPT Pimpo and CAPT Singleton, to celebrate the recent selection for promotion to Flag rank for CAPT Pimpo and CAPT Singleton. The

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trip was not, according to the complainant, necessary to accomplish legitimate government business or intended to provide a real opportunity for the subjects to have meaningful engagement with their counterparts in the RN.

61. The subjects denied having anything more than a professional association with each other. While the fact that the subjects' wives joined them on this trip may have contributed to the "optics" issue also mentioned by the complainant, we determined that there were no additional travel costs paid for by the government as a result of the wives having traveled with their husbands. Moreover, NAVINSGEN determined that there was an official purpose for their trip to the UK.

62. The complainant's additional concern about an itinerary that included a weekend in London, with no official business conducted on Saturday and only limited social interaction with RN personnel on Sunday was closely examined. The evidence and witness testimony established that the subjects maintained full schedules on the two workdays before and the three workdays that followed the weekend in London. We found no fault with the ORF dinner RADM Heinrich hosted on the day of their arrival in UK. We also accepted that a free day on Saturday and much of Sunday was not improper under the circumstances and that the schedules of both RADM Heinrich and the senior officials in UK made it difficult to impossible to avoid having a weekend in UK.

63. Having determined that there was an official purpose for their travel to the UK, we examined the details of their travel planning and whether or not they incurred expenses to be paid by the government responsibly as contemplated by the JFTR. We determined that RADM Heinrich, CAPT Pimpo and CAPT Singleton, without proper justification, failed to use the available contract air fare when they traveled from Washington, DC, to London and when they returned. All three flew at a higher cost to the government than was necessary to complete the mission. RADM Heinrich was not aware that a non-contract flight had been selected. His lack of awareness was not surprising to us given our findings about his hands-off approach to all his official travel. CAPT Singleton testified that he believed his time was better spent at the office and saw no reason to adjust his departure from work in order to take a contract flight. CAPT Pimpo testified that he did not believe it was his responsibility to challenge the TDY itinerary established for him by RADM Heinrich. The subjects' respective decision about

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their use of air fare for this period of TDY was not aligned with their individual responsibility to be a prudent traveler.

64. We further determined that RADM Heinrich, CAPT Pimpo and CAPT Singleton exceeded maximum lodging per diem during their first three nights in London. The subjects failed to take note of the fact that the cost of their hotel rooms exceeded maximum lodging per diem. While these higher costs were not significantly large dollar amounts, the subjects' unquestioned reliance on staff personnel to arrange their official travel on the front end of this trip and process their respective travel claims on the back end of their travel showed a complete lack of ownership for the costs that they individually incurred. Accordingly, we concluded that RADM Heinrich, CAPT Pimpo and CAPT Singleton failed in their individual obligations to exercise prudence in incurring government paid expenses as contemplated by the standard; they did not exercise the same care and regard for incurring government paid expenses as would a prudent person traveling at personal expense. We further concluded that RADM Heinrich, CAPT Pimpo and CAPT Singleton exceeded maximum lodging per diem and incurred excessive air fare costs without appropriate justification.

65. In summary, we specifically found that the trip was properly an official trip, had official duties scheduled with limited and reasonable periods of non-duty time. We also specifically found that there was an appropriate official purpose for CAPT Pimpo and CAPT Singleton to be on the trip and took note that in the interests of economy RADM Heinrich did not take his Flag Aide as he could have done and thereby made a conscious effort to conserve government funds.

Conclusion - Allegation #1

66. The allegation is substantiated with respect to all three subjects in that they failed to use available contract air fare and improperly claimed and accepted per diem exceeding what was permitted without proper justification or operational necessity for having done so.

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Official Travel to KU 26-29 April 2012

67. Allegation #2: That RADM Heinrich violated various provisions of the JFTR related to his official travel to KU on 26-29 April 2012.

Findings of Fact - Allegation #2

68. RADM Heinrich is a 1989 graduate of the Navy's Petroleum Management masters program taught at KU. The KU Chemical and Petroleum Engineering (C&PE) Department teaches this curriculum to Naval Officers under contract to the U.S. Naval Postgraduate School.⁷

69. On 26-29 April 2012, RADM Heinrich traveled at government expense and visited his alma mater, KU, located in Lawrence, KS. This period of TDY was a continuation of the UK trip discussed in Allegation #1 above.

70. RADM Heinrich previously visited KU just two months earlier, on 9-12 February 2012, and at government expense.

71. The complainant alleged RADM Heinrich scheduled the April 2012 trip to KU "to receive a personal alumni award" and his travel at government expense was "primarily for personal reasons."

Primary Purpose of Travel - Official or Personal

72. RADM Heinrich's itinerary in conjunction with his travel to KU was as follows:

Day & Date (2012)	Activity (all times are local)
Thursday, 26 April	Departed Washington Dulles International Airport @ 1528 and arrived Kansas City International Airport @ 1709; traveled to hotel accommodations in Lawrence

⁷ Educational Service Agreement #N00244-09-G-0041, of June 25, 2009, states in part that the University of Kansas will provide educational services in the form of instruction with standard offerings of courses available to the public to the government.

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Friday, 27 April	Attended briefs and meetings with school officials and KU military students and spoke at a KU recognition luncheon, 0830-1630
Saturday, 28 April	Participated in VTC with Navy Reserve Supply Corps (SC) personnel and SC Officer Detailer presentation to the Navy Petroleum Management masters program students @ KU, 0900-1130; remainder of day was personal time spent going to KU Spring football game and C&PE Hall of Fame Awards Dinner to accept his personal award
Sunday, 29 April	Departed Kansas City International Airport @ 1154 and arrived Harrisburg, PA @ 1711

73. On 23 February 2012, [REDACTED], Chairman of C&PE Department's Hall of Fame Committee, sent an email to RADM Heinrich and notified him that he had "been nominated and selected for [their] 2012 Hall of Fame." [REDACTED] explained in his email to RADM Heinrich that the purpose of the award was:

- To recognize important contributions of individuals to the professions of Chemical Engineering or Petroleum Engineering and to society
- To provide focus on the KU Chemical and Petroleum Engineering Department
- To provide a role model and source of motivation for current and future engineering students

74. [REDACTED] stated that when he learned about the KU award recognition banquet and gift offers, he contacted NAVSUP's [REDACTED], [REDACTED], and requested she review the Admiral's proposed trip to KU in order to accept their Hall of Fame award. [REDACTED] redirected [REDACTED] to her staff and [REDACTED] request for a legal determination was assigned to [REDACTED] in the NAVSUP Office of Counsel.

75. [REDACTED] stated that he posed several questions about RADM Heinrich's proposed travel to KU and any potential gift or gifts he might receive in conjunction with his visit to KU to [REDACTED] by email. [REDACTED] did not answer his email. [REDACTED] further stated that when his questions to

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b6 b7c k2 went unanswered, he did not follow-up with [REDACTED] about the matter. To the best of [REDACTED] recollection, a legal opinion was not provided by the NAVSUP Office of Counsel to anyone prior to RADM Heinrich going on travel to KU or at any time before he accepted the award.

76. b6 b7c k2 testified and provided email clarification regarding his testimony about RADM Heinrich's TDY to KU. He stated that he did not follow-up with b6 b7c k2 and he did not obtain answers to the questions that b6 b7c k2 posed to him about RADM Heinrich's proposed trip to KU. b6 b7c k2 said he was not aware "if RADM Heinrich or any other NAVSUP front office member (b6 b7c k2, b6 b7c k2) were contacted by the NAVSUP legal office regarding this trip or obtained legal permission" at any time before RADM Heinrich traveled to KU and accepted his award.

77. b6 b7c k2 further explained the general level of support provided by the NAVSUP Office of Counsel for RADM Heinrich's official travel stating:

During my tenure as b6 b7c k2 (April 2011-May 2012), [REDACTED] nor anyone in the legal office ever approached me on permissions for any trip other than the Kansas University (April 2012) trip. As I stated in my 10 April 2013 email to [NAVINGEN], RADM Heinrich held weekly staff meetings on Tuesday with all the N-code leaders. Each meeting was attended by b6 b7c k2 or a representative on her behalf. Each week during the briefing, RADM Heinrich's upcoming travel would be shown on a slide. RADM Heinrich would talk about the purpose of each and every trip and who he was going to see during each trip, the visit's relevance to the NAVSUP mission, etc. The April 2012 visit would have been on such a slide and most likely discussed. As the Chief would discuss each upcoming trip, I never (for any trip) remember the legal office representative objecting to any trip RADM Heinrich was looking to execute. This includes in all weekly staff meetings [that followed] b6 b7c k2 email to me on 28 February 2012 [about the April TDY to KU].

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78. The award citation used to recognize RADM Heinrich at the awards banquet reads, with only minor differences, just like his official biography as posted on the Navy's official website.

Use or non-use of Contract Air Fare

79. RADM Heinrich selected a non-contract fare for his flight from Washington, DC, to Kansas City International Airport. A contract fare was available at the time his travel arrangements were made. RADM Heinrich's air fare to Kansas City International Airport and his air fare returning back to Harrisburg Regional Airport, cost \$321 more than the available contract fares.

80. RADM Heinrich's travel claim contained the following justification statement as the reason why he selected a non-contract fare from Washington, DC, to Kansas City International Airport: "Does not meet mission requirements. Flight from United Kingdom arrives at 1130 EST. Official meeting in Pentagon at 1300."

81. RADM Heinrich testified that he did not have a meeting in the Pentagon on 26 April. Instead of going to the Pentagon, he recalled that he made a phone call to whomever he needed to speak with that day. RADM Heinrich remained at Washington Dulles International Airport from the time his plane arrived from UK until his plane for Kansas City International Airport departed.

Claims Exceeding Per Diem

82. RADM Heinrich's travel authorization and claim for this trip showed his destination as "Kansas City, KS," however he did not have any official duties there. KU is located in Lawrence and that was RADM Heinrich's destination and where his lodging was located. RADM and ~~XXXXXXXXXX~~ stayed at The Oread Hotel in Lawrence. RADM Heinrich claimed and was reimbursed \$77 per night, plus an appropriate non-mileage expense for hotel taxes, for the three night stay in Lawrence. The \$77 amount he claimed, however, generated a DTS flag because RADM Heinrich's travel voucher improperly identified his TDY location for this trip as Kansas City. The maximum rate for lodging per diem in Kansas City was \$99. While it appeared he paid a lodging rate below maximum lodging per diem during his stay, in fact, he paid an amount equal to the maximum lodging per diem for Lawrence.

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83. Having identified that a wrong TDY location had been used to determine per diem entitlements for the KU trip, we examined whether or not a proper amount had been claimed for Meals and Incidental Expenses (M&IE) during the time RADM Heinrich was in Lawrence. We found that he claimed and was reimbursed at the higher Kansas City M&IE rate of \$61 per day as opposed to the correct rate of \$46 per day for Lawrence. RADM Heinrich claimed and was paid a total of \$56.25 more for M&IE than he was entitled to receive.

Use of GTCC

84. RADM Heinrich used his GTCC to purchase air fare and lodging accommodations in accordance with the JFTR.

Extra Days before or after TDY

85. RADM Heinrich arrived in Lawrence on Thursday evening, 26 April, the same day he returned to the U.S. from his 8-day TDY to UK. He had a full workday on Friday, 27 April; he divided his time between various meetings with KU officials but he also met with members of the KU Navy ROTC unit and spoke by Video Teleconference (VTC) with SC Officers gathered at a training symposium in Jacksonville, FL. On Saturday, 28 April, however, RADM Heinrich had only two work related activities from 0900-1130. He spoke to Navy Reserve SC Officers assembled in Jacksonville by VTC and he attended a presentation made by [REDACTED], to the KU students enrolled in the Petroleum Management masters program. b6 b7c k2 [REDACTED] was, at the time, b6 b7c k2 [REDACTED], [REDACTED] and b6 b7c k2 [REDACTED] at Navy Personnel Command (NPC), Millington, TN.

Accounting for leave

86. RADM Heinrich was not required and he did not take any leave in conjunction with his TDY to KU.

Other administrative errors noted by the investigation

87. RADM Heinrich did not create or digitally sign his travel claim for his TDY to KU. It was administratively processed by his staff as a part of the Washington, DC and UK trip discussed in Allegation #1. He did not review or sign his claim form before it was uploaded into DTS with his travel receipts.

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Applicable Standards - Allegation #2

88. In addition to the standards cited for Allegation #1 above, JFTR Chapter 7, Part K, Paragraph U7325A, states:

GOV'T-funded travel and transportation allowances may be authorized for travel to receive an honor award sponsored by a non-Federal organization provided the award is closely related to the . . . [t]raveler's official duties, and . . . Service/Agency's functions and activities.

Analysis - Allegation #2

89. Pursuant to the JFTR, government-funded travel and transportation expenses may be authorized for travel to receive an award sponsored by a non-Federal organization provided the award is closely related to the traveler's official duties and the Navy's functions and activities. In the case of RADM Heinrich's TDY to KU on 26-29 April and his acceptance of the 2012 C&PE Hall of Fame award, the purpose of the award did not meet JFTR requirements. Rather, the award RADM Heinrich accepted at KU was intended:

- To recognize important contributions of individuals to the professions of chemical or petroleum Engineering and society
- To provide focus on the KU Chemical and Petroleum Engineering Department
- To provide a role model and source of motivation for current and future engineering students at KU

90. We determined that RADM Heinrich was honored by KU for having been a KU graduate student who later succeeded in his Navy career and achieved Flag rank. The award citation KU drafted was nothing more than a slightly edited version of RADM Heinrich's official biography. The award did not establish any relationship between the master's degree RADM Heinrich earned at KU and some later contribution he made to Navy or DLA

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petroleum management. While the award recognition he received may have been a well-deserved personal accolade, it lacked the necessary tie to the "Service/Agency's functions and activities" to satisfy the requirements for government-funded travel.

91. In conducting our examination of the facts, we carefully considered what official duties RADM Heinrich scheduled and accomplished during this period of TDY. Although we determined he had a full day's activities at KU on Friday, we were not convinced that these events justified his trip to accept the personal awards recognition bestowed upon him the following night. Further, RADM Heinrich's duties on Saturday only occupied two and half hours of his time and they were concluded before noon that day. We were not persuaded that his duties on Saturday required him to extend his TDY, at government expense, until Sunday morning and thereby afford him the opportunity to attend the awards banquet Saturday night. Extending his stay in Lawrence and delaying his departure until Sunday morning was RADM Heinrich's personal choice. Moreover, we concluded that his travel to KU to receive a personal award was not appropriate; it did not satisfy the criteria contemplated in standard.

Conclusion - Allegation #2

92. The allegation is substantiated.

93. Allegation #3: That RADM Heinrich improperly accepted a gift from a prohibited source in violation of 5 C.F.R. § 2635.202, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart B, Gifts from Outside Sources.

Findings of Fact - Allegation #3

94. The facts in this allegation were not disputed. In addition to being recognized at the awards' banquet on Saturday evening, 28 April, RADM Heinrich stated he accepted a gift in the form of a laser-engraved chair from KU. The chair was given to him to commemorate his selection for the C&PE Hall of Fame.

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The university purchased and shipped the chair to RADM Heinrich in Mechanicsburg. The total cost of the chair, with shipping, was \$338. RADM Heinrich provided a picture of the chair's laser engraved backrest; he said that the chair sits in his office at NAVSUP Headquarters.

95. KU is a business entity with DoD contracts exceeding \$25,000.00 and as such is a prohibited source.⁸

Applicable Standard - Allegation #3

96. 5 C.F.R. PART 2635 - Standards of Ethical Conduct For Employees of the Executive Branch.

Subpart B - Gifts from outside sources.

§ 2635.202 General standards.

(a) General prohibitions. Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.

§ 2635.203 Definitions.

. . .

(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

⁸ KU is listed as a prohibited source on page 252 of DoD SOCO (Standards of Conduct Office) Ethics Resource Library found online at: http://www.dod.mil/dodgc/defense_ethics/resource_library/contractor_list.pdf

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§ 2635.204 Exceptions.

. . .

(d) Awards and honorary degrees. (1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of \$200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

(i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and

(ii) Under which selection of award recipients is made pursuant to written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

(3) An employee who may accept an award or honorary degree pursuant to paragraph (d) (1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

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Analysis - Allegation #3

97. The facts for this allegation were not disputed. RADM Heinrich stated that he accepted a gift in the form of a laser-engraved chair from KU. The gift was purchased by the university and shipped to RADM Heinrich in Mechanicsburg at a cost of \$338.

98. NAVINSGEN determined that KU is a prohibited source and 5 C.F.R. § 2635.202 specifically prohibits military members from accepting gifts from a prohibited source. Although the standard allows for a gift acceptance exception when the value of the gift is \$200 or less, the criteria of § 2635.204 (d) were not met in this instance. We concluded, therefore, that RADM Heinrich should not have accepted the chair and that doing so was a violation of the standard.

Conclusion - Allegation #3

99. The allegation is substantiated.

100. **Allegation #4:** That RADM Heinrich improperly used a subordinate's official time in violation of 5 C.F.R. § 2635.705, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart G, Misuse of Position.

Findings of Fact - Allegation #4

101. The complainant questioned whether or not it was appropriate for RADM Heinrich to rely upon a government civilian employee to write speeches if those speeches were made in conjunction with "Non-official/personal events and functions." The complainant stated RADM Heinrich's acceptance speech at KU awards banquet on 28 April was in this category. RADM Heinrich testified that he gave an acceptance speech at the awards

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banquet and he believed that the speech had been written by someone in the NAVSUP Commander's Action Group (CAG).⁹

102. b6 [REDACTED] is a government employee working in NAVSUP's Office of Corporate Communications. He was previously assigned with the CAG and was one of the individuals responsible for writing speeches and talking points used by RADM Heinrich at promotions, retirements, and special events. [REDACTED] said he wrote several speeches used by RADM Heinrich in conjunction with the two trips he made to KU in February and April 2012. [REDACTED] provided NAVINSGEN a copy of the speech he wrote for RADM Heinrich to use at the awards banquet on 28 April.

103. As discussed in the findings of fact and analysis sections for Allegation #2 above, it was determined the award ceremony on Saturday night, 28 April, was not an official function. Accordingly, we determined that the speech RADM Heinrich gave at the awards banquet was not in the performance of his official duties.

Applicable Standard - Allegation #4

104. 5 C.F.R. PART 2635 - Standards of Ethical Conduct For Employees of the Executive Branch.

Subpart G - Misuse of Position.

§ 2635.705 Use of official time.

. . .

(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.

⁹ Commander's Action Group (CAG) was a fairly new organization established by RADM Heinrich to help him be more effective in representing NAVSUP interests during various meetings and engagements he makes at the Flag level. The CAG was established as a small group; it includes mid-grade and senior officers and government civilians.

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Analysis - Allegation #4

105. We determined that b6 [REDACTED] expended an unspecified number of work hours to prepare a speech that RADM Heinrich delivered when he accepted the 2012 C&PE Hall of Fame award on 28 April. The time [REDACTED] spent preparing RADM Heinrich's acceptance speech was not an appropriate use of his official time. We concluded, therefore, that the use of the speech writer's official time to prepare a speech for an unofficial and personal occasion was improper and further concluded that RADM Heinrich was responsible for the misuse of b6 [REDACTED] official time.

Conclusion - Allegation #4

106. The allegation is substantiated.

Official Travel to Philadelphia, PA, & Dallas, TX, 1-5 May 2012

107. **Allegation #5:** That RADM Heinrich violated various provisions of the JFTR related to his official travel to Philadelphia, PA, and Dallas, TX, on 1-5 May 2012.

Findings of Fact - Allegation #5

108. On 1-5 May 2012, RADM Heinrich traveled at government expense to Philadelphia and Dallas.

Primary Purpose of Travel - Official or Personal

109. RADM Heinrich's itinerary in conjunction with his travel to Philadelphia and Dallas was as follows:

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Day and Date (2012)	Activity (all times are local)
Tuesday, 1 May	Full workday @ NAVSUP Headquarters 0800-1730 then departed by car and traveled to Philadelphia
Wednesday, 2 May	Site visit @ NAVSUP Weapons System Support, Philadelphia 0800-1630; traveled to Philadelphia International Airport for flight to Dallas; arrived Dallas - Ft Worth International Airport @ 2120
Thursday, 3 May	Site visits @ Aviall Services Inc. (an aviation parts supplier) and NAS JRB Dallas - Ft Worth 0800-1530
Friday, 4 May	Site visit @ Lockheed Martin (Joint Strike Fighter Program) 0900-1630
Saturday, 5 May	Departed Dallas - Ft Worth International Airport @ 1100 and returned to Harrisburg International Airport arriving @ 1718

110. The complainant alleged that RADM Heinrich scheduled his official travel to Dallas so that he and his [REDACTED] could spend time with b6 b7c [REDACTED], USN (Retired) and his b6 [REDACTED]. The complainant stated that the two b6 b7c k2 [REDACTED] were "very close friends." The complainant also alleged RADM Heinrich accepted an improper gift in the form of free accommodations from the b6 b7c [REDACTED] when RADM Heinrich and his [REDACTED] stayed in the b6 b7c k2 [REDACTED] home during this TDY. At the time, b6 b7c [REDACTED] worked for Lockheed Martin Aeronautics Company. He was the Director, Sustainment Business Operations for the F35 Lightning II Joint Strike Fighter Program.

111. RADM Heinrich testified that he and his b6 [REDACTED] enjoyed a long-standing friendship with RDML and b6 [REDACTED]. The two officers came up through the Navy Supply Corps together. They have known each other for about twenty years; they were Supply Corps Flag Officers at the same time, until b6 b7c [REDACTED] retired.

112. RADM Heinrich testified that he slept in his hotel room each night during his TDY to Dallas. He did not accept the invitation from the b6 b7c [REDACTED] to stay in their home, however, b6 [REDACTED] stayed with the b6 b7c [REDACTED] on one of the nights she and RADM Heinrich were in Dallas together. RADM Heinrich also testified that he and b6 [REDACTED] were the b6 b7c k2 [REDACTED]

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guests for dinner one night during this TDY; the b6 b7c paid for their meal that night.

Use or non-use of Contract Air Fare

113. RADM Heinrich selected a non-government fare for his flight from Philadelphia to Dallas. Contract air fare was available at the time his travel arrangements were made. RADM Heinrich's air fare to Dallas cost \$1,400.10 more than the available contract fare.

114. RADM Heinrich's travel claim contained the following justification statement as the reason why he selected a non-contract fare from Philadelphia to Dallas: "Does not meet mission requirements. This flight is the only flight that will fit the tight timeline for this trip."

Claims Exceeding Per Diem

115. RADM Heinrich was reimbursed for actual expenses above the maximum rate for lodging per diem for his three nights stay in Dallas. RADM Heinrich received \$139 against a maximum lodging per diem of \$113 for Dallas. The justification provided in his travel voucher stated: "This was slightly above per diem but the location of this hotel was the best for the logistics of the meetings around the [Dallas - Ft Worth] metroplex."

Use of GTCC

116. RADM Heinrich used his GTCC as required by the JFTR to purchase air fare and lodging accommodations in conjunction with his travel to Philadelphia and Dallas.

Extra Days before or after TDY

117. There were no free days, before or after the TDY, during which RADM Heinrich collected per diem or incurred costs paid by the government.

Accounting for leave

118. RADM Heinrich was not required and he did not take any leave in conjunction with his TDY to Philadelphia and Dallas.

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Other administrative errors noted by the investigation

119. RADM Heinrich's claimed \$417 for lodging expense in Dallas, however, his three-nights lodging there totaled \$407 (\$139 x 3).

120. RADM Heinrich did not claim and he was not reimbursed for the lodging taxes he paid in conjunction with his TDY in Dallas. We note here that a traveler in the U.S. or a U.S Territory is entitled to claim these taxes as a separate non-mileage expense. In this case, RADM Heinrich was entitled to claim \$25.02 (\$8.34 x 3) in state tax and another \$37.53 (\$12.51 x 3) in city tax. Although we noted this error that RADM Heinrich had not claimed a legitimate travel expense, we did not consider it to be a violation of the JFTR since it accrued to the benefit of the government and the detriment of the subject.

121. RADM Heinrich's travel voucher for this TDY was created and T-entered in DTS by b6 b7c [REDACTED] on 11 May 2012. It was reviewed and then approved for payment by his b6, b6 b7c k2 [REDACTED] the same day. RADM Heinrich did not digitally sign his travel claim for this period of official travel nor did he sign his paper claim before it was uploaded with his receipts into DTS.

Applicable Standards - Allegation #5

122. See JFTR standards cited for Allegation #1 above.

Analysis - Allegation #5

123. The JFTR states in part that TDY assignments may be authorized and approved only when necessary for official government business. We determined that RADM Heinrich had an official purpose for TDY in Dallas. RADM Heinrich's official itinerary was planned and scheduled to accomplish multiple objectives as required by the standard.

124. We were not persuaded, however, that this period of TDY could not have been better planned to use an available contract flight between Philadelphia and Dallas. RADM Heinrich visited a subordinate NAVSUP command in Philadelphia on Wednesday and his

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first meeting in Dallas was the following morning with a private commercial company. His itinerary in both locations was under his control; he was not reacting to the scheduling priorities of a higher echelon commander. We determined, therefore, that the excessive air transportation cost could have been avoided.

125. We were also not persuaded that of the many hotels available in the Dallas metropolitan area that one within the maximum per diem could not be found. It was obvious from the witness interviews we conducted and the documentary evidence we collected that proper planning and adherence to the spirit and intent of the JFTR was not a priority for RADM Heinrich when he traveled. Although the dollar amounts above maximum lodging per diem in this case were not significant on their own, we concluded that the excessive lodging expenses, like the use of non-contract air fare, were avoidable costs had RADM Heinrich ensured proper TDY planning had taken place.

Conclusion - Allegation #5

126. The allegation is substantiated to the extent that RADM Heinrich did not use government contract air and he exceeded maximum lodging per diem without proper justification for having done so.

Official Travel to Norfolk, VA, & Washington, DC, 6-13 May 2012

127. Allegation #6: That RADM Heinrich violated various provisions of the JFTR related to his official travel to Norfolk, VA, and Washington, DC, on 6-13 May 2012 and failed to document his use of annual leave during the same period.

Findings of Fact - Allegation #6

128. On 6-13 May 2012, RADM Heinrich traveled at government expense to Norfolk and Washington, DC.

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Primary Purpose of Travel - Official or Personal

129. RADM Heinrich's itinerary in conjunction with his travel to Norfolk and Washington, DC, was as follows:

<u>Day & Date (2012)</u>	<u>Activity (all times are local)</u>
Sunday, 6 May	Traveled from Mechanicsburg to Norfolk in a government vehicle driven by ██████████ (1200-1700)
Monday, 7 May	Attended meetings at U.S. Fleet Forces Command (USFF) and went to the disestablishment ceremony for NAVSUP Logistics Operations Center in Norfolk
Tuesday, 8 May	Attended morning meetings at USFF and Navy Region Mid-Atlantic; traveled to Washington, DC, in government vehicle with ██████████
Wednesday, 9 May	Attended meetings at Pentagon (0800-1800)
Thursday, 10 May	Attended meetings at Pentagon and Washington Navy Yard (0800-1400); driven to Baltimore - Washington International (BWI) Airport and commenced leave
Friday, 11 May	Regular leave in California
Saturday, 12 May	Regular leave in California
Sunday, 13 May	Regular leave in California
Monday, 14 May	Returned to Mechanicsburg; traveled by personally funded air fare and arrived at Harrisburg International Airport at 1548

Use or non-use of Contract Air Fare

130. RADM Heinrich did not use air transportation in conjunction with his TDY to Norfolk and Washington, DC. Instead, he rode in a government vehicle driven by ██████████ from Mechanicsburg to Norfolk and from there to Washington, DC. The AO determined that travel by government vehicle was more advantageous for the government than air travel for this trip.

Claims Exceeding Per Diem

131. There were no claims for actual expenses in excess of the maximum authorized per diem.

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Use of GTCC

132. RADM Heinrich used his GTCC as required by the JFTR to purchase lodging. The AO determined that government ground transportation was more cost effective for this trip and air fare was not required to be purchased.

Extra Days before or after TDY

133. The complainant alleged that RADM Heinrich scheduled and completed official travel to San Diego, CA, on May 13-15 (sic) in order to attend his [REDACTED]. RADM Heinrich did not, however, go on official travel to San Diego as the complainant believed. Instead, he traveled, at personal expense, to Los Angeles, CA, to attend his [REDACTED] b6 b7c k2 after he concluded his TDY to Norfolk and Washington, DC, on 10 May. RADM Heinrich did not claim any per diem expenses for the three days he was on leave to attend his b6 b7c [REDACTED] b6 b7c k2.

Accounting for leave

134. On Thursday, 10 May, RADM Heinrich attended meetings in the Pentagon until early afternoon. Afterwards, b6 b7c k2 [REDACTED] drove him in a government vehicle to Baltimore-Washington International (BWI) Airport and RADM Heinrich began his personal travel to California.

135. DTS records showed that RADM Heinrich was supposed to be on leave Friday, 11 May, through Sunday, 13 May. RADM Heinrich testified that he planned this period of leave so that he could attend his b6 b7c k2 [REDACTED] in California. He testified that he purchased his own airline ticket for this trip and stated that "it was well understood [by my personal staff] that I was on leave"

136. RADM Heinrich's travel claim for this period of official travel states that he took leave on 11-13 May; he was not paid per diem for those three days. His personal leave record, however, did not show that he was charged for the leave taken. Regarding any error in his personal leave record, RADM Heinrich testified:

I know b6 b7c k2 [REDACTED] [knew] I was on leave. It was a ticket I produced myself. I said, "I'm going on leave

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for my b6 b7c k2 . I'm buying the ticket myself," and if that's -- if that leave wasn't charged, then it's a terrible oversight.

137. b6 b7c k2 , RADM Heinrich's b6 b7c k2 , stated that it was his responsibility to enter RADM Heinrich's leave requests into NSIPS.

Other administrative errors noted by the investigation

138. Because RADM Heinrich departed on leave from a TDY location, he would normally be entitled to return travel from his last TDY location, Washington, DC, back to his permanent duty station, Mechanicsburg. When RADM Heinrich filed his travel claim, he requested reimbursement and was paid for return travel based on the constructive cost of a one-way airline ticket from Washington, DC, to Harrisburg Regional Airport. He claimed and was reimbursed \$419.80 for return transportation.

139. We note here that as our investigation of RADM Heinrich's official travel was in progress, RADM Heinrich, aware of our examination of certain TDYs he completed, directed an internal review of his official travel by his NAVSUP staff. As a result of their review, a number of RADM Heinrich's travel claims, including the trips that were identified to us by the complainant, were reexamined by NAVSUP personnel in parallel with our investigation. Officials in NAVSUP's DTS Program Management Office requested NAVINSGEN permission to audit these claims and make appropriate adjustments. We granted their request with the understanding that we would retain access to the original documents electronically stored in DTS until the conclusion of our investigation. The constructive air fare cost RADM Heinrich claimed for reimbursement in conjunction with his Norfolk and Washington, DC, TDY was one of the items reevaluated. NAVSUP DTS officials determined, and we agreed with their determination, that constructive air fare cost was not properly claimed. They commented that:

The use of air transportation from Washington, DC, to Mechanicsburg would not be deemed prudent or advantageous to the government and an excessive expense since it is less than 400 miles. Air transportation is ordinarily the most cost efficient and expeditious way to travel for travel of over 400 miles one way from the PDS. Traveler was transported

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via government vehicle at the beginning of the trip. The same mode of transportation would have been used to return to duty station had the traveler not went on personal leave. Airline ticket reimbursement for \$419.80 was removed. No mileage entitlement is due to the traveler.

Applicable Standards - Allegation #6

140. In addition to the standards listed for Allegation #1, JFTR Chapter 3, Part E: Government Conveyance Use on TDY, states in part:

U3400 GOV'T AUTOMOBILE USE ON TDY

D. Limited to Official Purposes. Use of a GOV'T automobile is limited to official purposes, including transportation to and from (65 Comp. Gen. 253 (1986)):

1. Duty sites,
2. Lodgings,
3. Dining facilities,
4. Drugstores,
5. Barber shops,
6. Places of worship,
7. Cleaning establishments, and
8. Similar places required for the traveler's subsistence, health or comfort.

141. In addition to the JFTR standards noted above, Military personnel in the U.S. Navy take leave in accordance with guidance contained in the MILPERSMAN as amended by the provisions for the Navy Standard Integrated Personnel System (NSIPS) Electronic Leave (E-Leave) Implementation Plan (NAVADMIN 252/10).

a. The MILPERSMAN specifically authorizes leave in conjunction with TAD. That authorization comes with several caveats and requirements:

- In planning TAD, both the fact and the appearance of TAD arranged to serve the leave desires of the

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individual shall be scrupulously avoided. (1050-170-2b)

- Great care must be taken to ensure that when leave is granted with TAD: (a) it is clear the TAD is essential; (b) no additional cost to the Government is involved. (1050-170-3)

- Care should be taken to avoid payment of per diem during leave by ensuring the orders are properly written to reflect the member's leave desires. (1050-170-5)

b. NAVADMIN 252/10 directed all shore commands to implement E-Leave to request, track, and manage leave transactions for military personnel commencing on 1 August 2010. It stipulated that E-Leave for all military personnel would reside within the NSIPS Electronic Service Record (ESR) application for each military member. Further, it stated that it was imperative all military personnel establish access and routinely review their ESR as required by NAVADMIN 103/10 and NAVADMIN 043/09.¹⁰

Analysis - Allegation #6

142. We determined that RADM Heinrich had an official purpose for his TDY to Norfolk and Washington, DC, on 6-10 May 2012. RADM Heinrich's official itinerary was planned and scheduled to accomplish multiple objectives as required by the JFTR.

143. Our review of DTS documents and the testimony collected established that RADM Heinrich planned to take three days leave on 11-13 May at the conclusion of his official duties in

¹⁰ NAVADMIN 103/10 announced the phased implementation of self-service electronic leave. It stated in part that the use of E-Leave would streamline requests for leave, eliminate delays due to misrouting of paper leave requests, automate the command leave control log, and ensure that pay entitlements were properly credited without need for paper documents. NAVADMIN 043/09 announced the mandatory use of the Navy Standard Integrated Personnel System (NSIPS) Electronic Service Record (ESR) for all active duty personnel and it required them to establish and maintain a self-service ESR account not later than 5 April 2009.

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Washington, DC. We determined that he completed his official duties at the Pentagon at approximately 1400 on Thursday, 10 May. Thereafter RADM Heinrich traveled in a government vehicle driven by b6 b7c k2 to BWI airport. His flight from BWI airport to Los Angeles International Airport was for personal business; he went there to attend his b6 b7c k2 b6 b7c k2. While the use of a government vehicle on TDY is permitted, it is limited under the standard to official purposes. We concluded that RADM Heinrich conveyance to BWI airport in the government vehicle and his use of his Flag Aide's time to drive him there, under these circumstances, was not official business and not permitted by the standard.

144. We also determined that the three days leave RADM Heinrich took on 11-13 May were not properly documented in NSIPS as required by the MILPERSMAN and they were not deducted from his E-leave account. We also concluded, therefore, that RADM Heinrich failed to properly account for his use of personal leave as he was required to do in accordance with the MILPERSMAN. His reliance upon his Flag Writer to process his leave request did not absolve him of his own responsibility for the accuracy of his leave account. NAVADMIN 252/10 specifically requires that all military personnel establish access and routinely review their ESR for accuracy. We found no evidence that RADM Heinrich comported with this requirement.

Conclusion - Allegation #6

145. The allegation is substantiated in that RADM Heinrich improperly used a government vehicle in conjunction with his official travel and failed to properly account for personal leave taken in conjunction with this period of TDY.

**Official Travel to Washington, DC, and Richmond, VA, 30 May -
3 June 2012**

146. Allegation #7: That RADM Heinrich violated various provisions of the JFTR related to his official travel to Washington, DC and Richmond, VA, on 30 May - 3 June 2012 and failed to document his use of annual leave during the same period.

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Findings of Fact - Allegation #7

147. On 30 May - 3 June 2012, RADM Heinrich traveled at government expense to Washington, DC and Richmond.

148. RADM Heinrich's official travel to Washington, DC and subsequent personal trip to Richmond was not part of the original complaint we received. This particular trip came to our attention, however, when we examined the other travel RADM Heinrich completed during the three month period identified in the complaint we received.

Primary Purpose of Travel - Official or Personal

149. RADM Heinrich's itinerary in conjunction with his travel to Washington, DC and Richmond was as follows:

Day & Date (2012)	Activity (all times are local)
Wednesday, 30 May	Attended morning meetings at NAVSUP and rode with b6 b7c k2 to Washington, DC; attended afternoon meetings at Pentagon
Thursday, 31 May	Traveled to Defense Logistics Agency at Ft. Belvoir, VA; attended Retired SC Flag Officers Conference (0900-1430)
Friday, 1 June	Returned to Pentagon for meetings 0800-1200; after lunch, rode with b6 b7c k2 in government vehicle to AMTRAK train station in Alexandria, VA; took train to Richmond
Saturday, 2 June	Regular Leave in Richmond
Sunday, 3 June	Regular Leave; returned to Mechanicsburg in personal vehicle with b6 b7c

150. For this period of travel, Washington, DC, was the only official temporary duty location. RADM Heinrich testified that he went to Richmond for personal reasons; he said he did not intend that any of the expenses related to his travel to Richmond be claimed for reimbursement.

151. RADM Heinrich testified that he drove from Mechanicsburg to Washington, DC, in his personal vehicle with b6 b7c k2. He said after they reached Washington, DC, [redacted] [redacted] dropped him off and then continued on [redacted] way to Richmond in their

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personal vehicle. Thereafter, RADM Heinrich rode in a government vehicle driven by b6 b7c k2 . b6 b7c k2 provided RADM Heinrich's ground transportation in and around Washington, DC.

Use or non-use of Contract Air Fare

152. RADM Heinrich was not required to use air transportation in conjunction with his TDY to Washington, DC.

Claims Exceeding Per Diem

153. RADM Heinrich did not claim any actual expenses above his authorized per diem for this period of TDY. Although the inclusive dates for this trip in DTS were 30 May - 3 June, RADM Heinrich properly stopped collecting per diem on Friday, 1 June; he did not collect per diem during the two days he was supposed to be on leave in Richmond.

Use of GTCC

154. RADM Heinrich used his GTCC as required by the JFTR to purchase lodging. Because the AO determined that government ground transportation was more cost effective for this trip, air fare was not required to be purchased. In conjunction with this trip, however, RADM Heinrich used his GTCC in error to purchase his train fare from Alexandria to Richmond. The train fare was a personal expense and should not have been purchased with the GTCC.

Extra Days before or after TDY

155. There were no free days, before or after the TDY, during which RADM Heinrich collected per diem or incurred costs paid by the government.

Accounting for leave

156. RADM Heinrich testified that he planned to take leave on 2-3 June to attend a family friend's wedding in Richmond. His travel claim for this trip showed that he was on leave for those two days; he did not collect any per diem while in Richmond.

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Other administrative errors noted by investigation

157. DTS records showed that RADM Heinrich claimed and was paid POV mileage from Richmond back to Mechanicsburg. He was not, however, entitled to POV mileage reimbursement from a leave location back to his permanent duty station.

158. After we notified RADM Heinrich of our investigation and before his interview, RADM Heinrich notified investigators that he was reviewing his travel claims and in particular his travel claim for this period of official travel. RADM Heinrich stated that errors had been made by b6 b7c k2 when she prepared his travel claim; he testified that he had not taken time to review his claim before it was submitted for payment. RADM Heinrich further testified that the POV mileage expense that he expected to be reimbursed was roundtrip mileage between Mechanicsburg and Washington, DC. He said that the information in DTS documenting that he was reimbursed for mileage expense between Richmond and Mechanicsburg was made in error.

159. DTS records showed that RADM Heinrich claimed and was reimbursed the cost of his train fare from Alexandria to Richmond.

Applicable Standards - Allegation #7

160. See JFTR and Military personnel leave standards cited in Allegation #6 above.

Analysis - Allegation #7

161. We determined that RADM Heinrich conducted official business in Washington, DC, on 30 May - 1 June. We also determined that his subsequent travel to Richmond was not official business, it was a personal trip he made to attend a family friend's wedding in the company of b6 b7c k2. We concluded, therefore, that RADM Heinrich's period of TDY ended on Friday, 1 June, in Washington, DC, not on Sunday, 3 June, in Richmond as reflected on his travel documents. We further concluded that RADM Heinrich was not entitled to be reimbursed for POV mileage he claimed between Richmond and Mechanicsburg

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and we acknowledge that this overpayment for POV mileage was recouped by administrative action after his claim had been filed as noted in the findings of fact.

162. When we examined RADM Heinrich's DTS documents for this trip, we determined he was approved to take leave on 2-3 June. We found, however, that the two days of leave he took were not processed in NSIPS as required by the MILPERSMAN and those days were not deducted from his E-leave account. We concluded, therefore, that RADM Heinrich failed to properly account for his use of personal leave as required by the standard.

163. We also determined that RADM Heinrich permitted b6 b7c k2 to drive him in a government vehicle to the train station in Alexandria on 1 June. As we have already noted, his purpose in going to the train station was personal, not official. We concluded, therefore, that this was an improper use of the government vehicle during TDY and a waste of official duty time.

164. Finally, because RADM Heinrich's travel from Alexandria to Richmond was for personal reasons, it was improper for him to claim the train fare expense for reimbursement. It was also improper for RADM Heinrich to use his GTCC to purchase the fare. We concluded, therefore, that RADM Heinrich's claim for reimbursement of this expense and his use of the GTCC to purchase train fare were violations of the standard.

Conclusion - Allegation #7

165. The allegation is substantiated.

Official Travel to Newport, RI, 7-12 June 2012

166. Allegation #8: That RADM Heinrich violated various provisions of the JFTR related to his official travel to Newport, RI, on 7-12 June 2012.

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Findings of Fact - Allegation #8

167. On 7-12 June 2012, RADM Heinrich traveled at government expense to Newport.¹¹

Primary Purpose of Travel - Official or Personal

168. RADM Heinrich's itinerary in conjunction with his travel to Newport, was as follows:

Day and Date (2012)	Activity (all times are local)
Thursday, 7 June	Attended morning meetings at the Pentagon then traveled from Washington Dulles International Airport to T.F. Green Regional Airport, Providence, RI; proceeded to hotel in Newport; attended social event that evening at the Prospective Commanding Officer of Navy SC School quarters
Friday, 8 June	Officiated at the Navy SC School change of command ceremony; made a courtesy call to Superintendent of Naval War College (NWC); toured Naval Undersea Warfare Center, Newport (0730-1700)
Saturday, 9 June	Free Day in Newport
Sunday, 10 June	Free Day in Newport
Monday, 11 June	Traveled to Groton, CT, in rental car; made courtesy call to Commander, Submarine Group TWO; toured Submarine Base New London, CT; toured and attended meetings at General Dynamics Electric Boat in Groton, CT, and returned to Newport (0700-1730)
Tuesday, 12 June	Attended Current Strategy Forum at NWC (1230-1600); returned to Washington, DC, (1600-2100) in order to attend meetings the following day at the Pentagon

169. The complainant alleged this trip was another example of RADM Heinrich arranging his official travel to include a weekend

¹¹ This period of TDY was actually part of a longer period of TDY that began on 4 June 2012 in Washington, DC, and concluded on 15 June 2012 in Mechanicsburg, PA. We focused our attention primarily on the six-day period mentioned in the complaint but we noted certain irregularities related to some of the TDY expenses incurred by RADM Heinrich outside the six-day period that we determined to be in violation of the JFTR.

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during which time the government paid for his per diem expenses and he enjoyed the company of his wife. The complainant commented that RADM and ~~bs~~ stayed in the Hotel Viking, a hotel the complainant characterized as being "the oldest and one of the most expensive hotels in Newport"

Use or non-use of Contract Air Fare

170. RADM Heinrich used contract air fare for this TDY.

Claims Exceeding Per Diem

171. RADM Heinrich selected a slightly more expensive rental car for his official travel to Newport than was available to him. The car selected was \$54 more than the lowest cost rental car available. The justification statement provided to the AO read: "[National] is the preferred company due to the tight timeline of this mission." We noted in our document review and from witness testimony that after he landed at T.F. Green Regional Airport, in Providence, RADM Heinrich's drove from the airport directly to his hotel in Newport and later that evening he went to a social function.

Use of GTCC

172. RADM Heinrich purchased his air fare and rental car as required by the JFTR with his GTCC. He did not, however, pay for his lodging expense for the 7-12 June stay in Newport. Instead, he improperly charged his lodging expense to a personal credit card. The justification statement provided to the AO stated that he "unintentionally charged personal card for lodging expense."

Extra Days before or after TDY

173. There were no free days, before or after the TDY, during which RADM Heinrich collected per diem or incurred costs paid by the government. There was, however, an included weekend when there were no official duties performed and per diem was paid.

Accounting for leave

174. RADM Heinrich was not required and he did not take any leave in conjunction with his TDY to Newport.

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Applicable Standards - Allegation #8

175. See JFTR standards cited for Allegation #1.

Analysis - Allegation #8

176. We determined that RADM Heinrich had an official purpose for his TDY in Newport, RI on 7-12 June. His official itinerary was planned and scheduled to accomplish multiple objectives as required by the JFTR. We noted that RADM Heinrich's official travel to Newport, RI, included a weekend for which he collected per diem. We closely examined, therefore, the official duties he performed on the workdays before and after the weekend and determined that his official delay, over the included weekend, was acceptable under the circumstances and the standard.

177. DoD policy requires DoD personnel to pay for "all costs incidental to official travel" with their GTCC. We determined that RADM Heinrich properly used his GTCC for his air fare but used a personal credit card to pay for his lodging in Newport. We found his justification for not using his GTCC for his lodging expense in Newport unpersuasive; RADM Heinrich was a very experienced and frequent traveler having completed more than 40 TDYs between the time he assumed Command of NAVSUP in July 2011 and the time he traveled to Newport in June 2012.

178. We also determined that RADM Heinrich failed to select the least expensive rental car when a lower cost rental car was available to him. We were not persuaded by his justification for selecting a higher cost rental car when he stated that the company selected was "the preferred company due to the tight timeline of this mission." There are six major rental car companies that service T.F. Green Regional Airport: Advantage, Alamo, Budget, Dollar, Hertz, and National. These rental car companies provide a comparable selection of appropriate rental cars to the traveling public. Moreover, we determined that RADM Heinrich's itinerary after he departed from the airport was not hurried or driven by any official duty requirement. He drove from the airport directly to his hotel in Newport and later that evening he attended a social event at the quarters of the Prospective Commanding Officer of the Navy SC School with

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his wife. Accordingly, we did not find that there was any reasonable requirement for RADM Heinrich to select a more expensive rental car for this trip. Doing so was his personal choice and the government is not responsible to pay for a traveler's personal choice when that choice results in the government incurring a higher cost.

179. We concluded, therefore, that RADM Heinrich traveled in violation of the standard during this period of TDY.

Conclusion - Allegation #8

180. The allegation is substantiated.

Concluding Remarks about Official Travel

181. We observed in our investigation of RADM Heinrich's use of official travel his reliance on his staff to properly arrange his TDYs and thereafter correctly adjudicate his travel claims without his proper involvement in the planning, approval or claim adjudication processes. RADM Heinrich's lack of proper involvement in the travel process was an abrogation of his duty to be a responsible traveler. Moreover, his mostly hands-off approach to arranging his official travel and filing his travel claims created an atmosphere with his personal staff and the NAVSUP DTS Program Office staff that perpetuated the problems we identified about his use of government travel funds during each of the six periods of TDY we examined in our investigation. While we acknowledge the positive effort begun by RADM Heinrich to have staff audit some of his prior travel claims for proper payments, we believe that a complete audit of his travel, one that will examine all of the TDY he completed during his assignment as Commander, NAVSUP, should be conducted and appropriate payment adjustments made to each travel claim examined by auditors.

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Detailing of b6 b7c k2

182. Allegation #9: That RADM Heinrich failed to act impartially with respect to detailing of [REDACTED], [REDACTED], from her assignment as his [REDACTED] to her current duty assignment in Ft Worth, TX, in violation of 5 C.F.R. § 2635.101, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart A - General Provisions.

Findings of Fact - Allegation #9

183. The complainant alleged that RADM Heinrich "created" a "non-existent billet [for [REDACTED]] in her home state of Texas" and thereafter approved her assignment to that billet. The complainant stated this special treatment of b6 b7c k2 by RADM Heinrich was inappropriate and especially so as it was common knowledge that [REDACTED] intended to leave active duty at the conclusion of her assignment in Texas.

184. b6 b7c k2 detached from NAVSUP in August 2012. [REDACTED] accepted Permanent Change of Station (PCS) orders to Naval Air Station (NAS)/Joint Reserve Base (JRB), Ft Worth and reported to the Aviation Support Detachment (ASD) for Commander, Fleet Logistics Support Wing in September 2012. When [REDACTED] reported to [REDACTED] new position, [REDACTED] was, in fact, assigned to an established (pre-existing) Navy Reserve Supply Corps billet. The incumbent officer assigned to the billet when [REDACTED] reported for duty had a Projected Rotation Date (PRD) of July 2013.

185. b6 b7c k2 [REDACTED], PERS-4412, was b6 b7c k2 detailer at the Navy Personnel Command (NPC); he was the officer who drafted b6 b7c k2 PCS transfer orders. b6 b7c k2 provided background information about the billet b6 b7c k2 was transferred to in Ft Worth. The documentation he provided showed the billet dated back to 1997. b6 b7c k2 explained that the billet in Ft Worth had twice before been filled by an Active Component Officer and that the assignment of two officers to the same billet for an extended period of overlap as was the case here was not unusual in his experience as a detailer.

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186. b6 b7c k2 was also assigned at NPC in code PERS-4412 at the time of b6 b7c k2 detailing and reassignment. He testified that he spoke with b6 b7c k2 and CAPT Singleton about possible follow-on assignments for b6 b7c k2. b6 b7c k2 recalled that CAPT Singleton wanted him to see if a career enhancing billet assignment in Texas was possible for her; CAPT Singleton told b6 b7c k2 that b6 b7c k2 was interested in Texas primarily for personal reasons.

187. b6 b7c k2 testified that it was not uncommon for the Supply Corps detailers to assign two officers to the same billet for an extended period of overlap, known as "double stuffing." He stated that double stuffing a billet occurred at times and whenever there was an excess inventory of officers at a particular grade available for transfer as compared to the number of vacant billets that needed to be filled. b6 b7c k2 further stated that it was not unusual in his experience for b6 b7c k2, an b6 b7c k2, to be assigned to a Reserve Component billet.

188. About her specific desire to be assigned in her home state, b6 b7c k2 stated:

I had many reasons why I wanted to come to NAS JRB Fort Worth after my detail to NAVSUP HQ, both personal and professional. In the past, I served as a Material Control Officer at a Helicopter Squadron at NAS North Island. Ever since that tour I have desired to return to an air station at an ASD or at the Wing...which we have both here at JRB! When I found out we had Supply Officer Positions, it peaked my interest and I informed my detailer I desired to take a billet in Fort Worth. In addition to my Supply duties on base, I am pursuing my MBA and working on JPME1 through the Marine Command and Staff College in order to stay competitive in the Supply Corps. Personally, I grew up not too far from my current duty station and my family lives a couple of hours from Fort Worth. With aging parents, it is a huge comfort to know I am a short drive away to assist them if needed.

189. RADM Heinrich testified that he spoke with b6 b7c k2 about her preference for an assignment after NAVSUP. He understood from their conversation that b6 b7c k2 wanted to get back to Texas to be closer to family. RADM Heinrich also said that

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he believed a tour at a Naval Air Station would be beneficial to **b6** career development. RADM Heinrich testified:

b6 wanted to get home, and -- and -- and like a lot of **b6 b7c**, you know, we have a heck of a time keeping them. So -- so trying to keep somebody like **b6**, you know, we barely have five percent **b6 b7c** at the O-6 level. We start with about 20, and then it goes down steadily, boom, boom, boom, until at the O-6 level we're barely able to keep five percent.

So we need **b6 b7c** to stay [on Active Duty], people like **b6** to stay. I would love for **b6** to stay, and I've encouraged **b6** to stay, but getting **b6** in the aviation billet at Fort Worth in my mind was -- was a way to keep **b6** interested, keep **b6** viable, get **b6** to work on **b6** JPME, get **b6** to work on potentially going to the War College or grad school after that, but, yeah, that was my advice to **b6**.

190. RADM Heinrich denied taking any action to transfer or create a billet for **b6 b7c k2**.

Applicable Standard - Allegation #9

191. § 2635.101 Basic obligation of public service provides in part:

(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

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in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

. . .

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Analysis - Allegation #9

192. The complainant's allegation that RADM Heinrich created a billet for b6 b7c k2 in Ft Worth is untrue. In fact, we determined that b6 b7c k2 was properly assigned to current billet by NPC personnel in accordance with standard Navy personnel assignment practices.

193. We determined RADM Heinrich spoke with b6 b7c k2 about b6 preference for a follow-on assignment and offered b6 career counseling and advice as would be expected from any reporting senior to a subordinate. We also determined that CAPT Singleton (then NAVSUP Chief of Staff) called and talked with b6 b7c k2 about finding an assignment in Texas for b6 b7c k2 following assignment at NAVSUP. We further determined that these actions were not inappropriate; they did not violate any rule or regulation governing the assignment of personnel. The action taken by RADM Heinrich to support a reasonable request from b6 b7c k2 to be assigned to a geographical area b6 preferred was appropriate.

194. We concluded, therefore, that RADM Heinrich did not give improper preferential treatment to b6 b7c k2 related to her transfer from NAVSUP and reassignment to a billet in Ft Worth.

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Conclusion - Allegation #9

195. The allegation is not substantiated.

Supply Corps Foundation Funding

196. Allegation #10: That RADM Heinrich improperly solicited and received funds from the San Diego Chapter of the Navy Supply Corps Officers' Foundation in violation of 5 C.F.R. § 2635.202, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart B, Gifts from Outside Sources.

Findings of Fact - Allegation #10

197. The complainant alleged that RADM Heinrich "routinely and inappropriately solicited and received funds" from San Diego Chapter of the Navy Supply Corps Foundation, a non-profit private association for current and former members of the Navy's Supply Corps. The complainant stated that RADM and b6 used foundation funds to pay for their "personal entertainment expenses" and "exhibited a sense of entitlement" about those funds. The complainant further alleged that CAPT Pimpo, who was at the time the president of the foundation, was complicit in giving RADM Heinrich "whatever he wanted" when it came to foundation monies. The complainant stated that their improper use of foundation monies was illegal and ethically wrong and an abuse of their respective positions.

198. RADM Heinrich denied having ever solicited or accepted any monies from the foundation either for the benefit of his command or for his personal benefit. He testified that while he was assigned in San Diego in 2009-2011, he occupied designated Flag quarters and that his quarters were used by the foundation, with his consent, as the venue to host one or more of the foundation's social events, e.g., a Holiday Open-House.

199. CAPT Pimpo testified about the time he was the president of the San Diego chapter of the foundation. CAPT Pimpo denied

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that RADM Heinrich ever requested or accepted funding from the foundation while he was its president.

200. [REDACTED], served as foundation [REDACTED] during the time CAPT Pimpo was the president of the foundation. He provided NAVINSGEN a copy of his records, the foundation's check register that he maintained as the [REDACTED] from July 2010 - Dec 2011. [REDACTED] stated that after reviewing his records, he had "no evidence, nor [did he] ever recall, writing a check specifically to RADM Heinrich."

201. [REDACTED], [REDACTED], succeeded CAPT Pimpo as the Commanding Officer of NAVSUP FLC San Diego and the president of the San Diego Chapter of the Navy Supply Corps Officers' Foundation. [REDACTED] reviewed foundation records that covered the entire period of RADM Heinrich's tour in San Diego. [REDACTED] reported that he found no record of RADM Heinrich having received foundation funds; he said there were, however, records that showed RADM Heinrich paid for his participation in several foundation events. [REDACTED] also stated that foundation records showed that the 2009 and 2010 Holiday Open House events were hosted at RADM Heinrich's quarters. He said on both occasions, the foundation paid the caterer [REDACTED] directly; no monies went to RADM Heinrich.

Applicable Standard - Allegation #10

202. 5 C.F.R. PART 2635 - Standards of Ethical Conduct For Employees of the Executive Branch.

Subpart B - Gifts from outside sources.

§ 2635.202 General standards.

(a) General prohibitions. Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.

§ 2635.203 Definitions.

. . .

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(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Analysis - Allegation #10

203. We found no evidence that RADM Heinrich either requested or received any financial resources from the San Diego Chapter of the Navy Supply Corps Officers' Foundation as alleged. We concluded, therefore, that he did not violate the standard.

Conclusion - Allegation #10

204. The allegation is not substantiated.

Frothing of Subordinates

205. **Allegation #11:** That RADM Heinrich made false official statements when he requested that two officers assigned at NAVSUP Headquarters be frothing to the grade of Captain in violation of the UCMJ, Article 107 - False Official Statements.

Findings of Fact - Allegation #11

206. The complainant alleged that RADM Heinrich intentionally submitted "a false and misleading justification" to the Secretary of the Navy (SECNAV) when he signed letters that requested b6 b7c k2 [redacted], and b6 b7c k2 [redacted] b6 b7c k2 [redacted], be frothing to Captain. The complainant stated that neither officer met any of the thirteen specific officer frothing criteria required by SECNAV Instruction 1420.2A, Frothing of Commissioned Officers, dated 13 April 2012.

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207. On 29 December 2012, RADM Heinrich signed two letters and requested that b6 b7c k2 and be frocked. Both officers were selected for promotion and assigned to Captain billets at NAVSUP headquarters. The letters RADM Heinrich signed were forwarded to Assistant Commander, Navy Personnel Command for Career Progression (PERS-8) for consideration and approval in accordance with the governing SECNAV instruction.

208. RADM Heinrich testified that the idea to frock b6 b7c k2 and originated with their immediate supervisor, b6 b7c k2, b6 b7c k2 for Supply Operations and Logistics. RADM Heinrich said he only spoke briefly with his b6 b7c k2, b6 b7c k2, about the letters when they came up to him for his signature. He also said that at some point before he forwarded the letters to NPC, he called and discussed the requests with b6 b7c k2 and told him that he checked with PERS-8 about whether or not the requests would be supported. RADM Heinrich recalled that after checking with PERS-8, b6 b7c k2 told him to send the requests and they would be approved.

209. b6 b7c k2 testified and confirmed that the frocking recommendations were his idea. He said his staff prepared the two letters; he reviewed the letters for content and accuracy and he routed them to RADM Heinrich for signature.

210. b6 b7c k2 and b6 b7c k2 testified substantially the same. They said their frocking was b6 b7c k2 idea and that he asked them to draft their respective frocking request letters for RADM Heinrich's signature. They complied and drafted their letters following the format in the governing instruction.

211. The frocking letter justification for b6 b7c k2 read:

b6 b7c k2 is assigned N31, b6 b7c k2 Supply Chain Management, an 0-6 position that reports directly to the Assistant Commander Supply Operations and Logistics Policy (N3/4), Naval Supply Systems Command (NAVSUP). b6 b7c k2 serves as the senior Navy representative for all processes and policies relating to Supply Chain Management across the Fleet. b6 b7c k2 is the lead for the NAVSUP's core business processes and manages the largest product and services line, Supply Chain Management, as well as Inventory Management and Warehouse Management with collective budgets exceeding

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\$600M. In addition, **b6** provides process and policy guidance to the NAVSUP Echelon III activities through her business process owners across the NAVSUP enterprise coordinating with a peer group of Fleet, OPNAV, SYSCOM and DLA 0-6s and GS-15s. This frocking is requested for **b6 b7c k2** to wear the appropriate rank to more effectively serve in this highly visible 0-6 billet.

212. The frocking letter justification for **b6 b7c k2** read:

b6 b7c k2 is assigned as **b6**, **b6 b7c k2** Fleet Support, an 0-6 position responsible to the Commander, Naval Supply System Command for developing and coordinating Fleet logistics support across a wide range of products and services and programs. He leads a team of 45 personnel including one 0-6. He is responsible for the logistics concept of support for the fleet introduction of new platforms including the Littoral Combat Ship, Joint Strike Fighter and DDG 1000. He manages the Navy's Food Service Program to include oversight of 300 general messes, training and sponsorship of 7,300 Culinary Specialists and audit readiness of the \$427M annual Subsistence-in-Kind budget. He manages the Navy Cash Program, an Acquisition Category III program with a \$20M annual budget that provides cash access to sailors on 151 platforms at sea. He is the technical expert for NAVSUP's Global Logistics Support and Husbandry; Quality of Life and HAZMAT Product and Services with \$90M annual budgets. He also serves as the Logistics Cross Functional Team lead for Aegis Ashore and NAVSUP's representative for Naval Logistics Integration. This frocking is requested to improve his effectiveness as he interfaces with 0-6 peers, all working to improve support to the warfighter.

213. **b6 b7c k2** testified about his discussions with PERS-8 prior to the frocking requests being approved. He recalled that in times past, PERS-8 had been lenient about their scrutiny of Supply Corps officer frocking requests because the requests were so infrequent. **b6 b7c k2** recalled that when speaking to PERS-8 about whether or not these two requests meet the criteria outlined in the SECNAV instruction, he said to them: "I really don't find anything on the list." It was his sense that PERS-8

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was "a little bit loose" with their interpretation of the SECNAV instruction and that the response he received from PERS-8 was "sure, you guys don't ask [for many]."

214. On 16 January 2013, PERS-8 approved both frocking requests. Thereafter, a frocking ceremony at NAVSUP Headquarters was scheduled and, on Friday, 25 January, RADM Heinrich frocked b6 b7c k2 and [REDACTED] to Captain.

Applicable Standard - Allegation #11

215. UCMJ, Article 107, False Official Statements, reads:

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

Analysis - Allegation #11

216. We reviewed the two frocking requests RADM Heinrich signed and in particular the justification statements he made regarding [REDACTED] and [REDACTED] therein. We determined that their respective frocking request accurately described the duties and responsibilities of two officers. Moreover, the justifications did not make any attempt to embellish or exaggerate the duties and responsibilities of either officer; the justification remarks did not attribute any of the specific criteria called for by the standard to either officer.

217. We specifically noted that the complainant observed that neither [REDACTED] nor b6 b7c k2 [REDACTED] met any of the thirteen frocking criteria specified in Enclosure (1) of SECNAV Instruction 1420.2A. We agreed with the complainant's assessment of these candidates eligibility against the criteria required by the SECNAV instruction. We did not, however, find fault with RADM Heinrich for submitting the requests. His administrative action to forward the requests was not improper.

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He was a senior advocating for two subordinates whom he found to be worthy of consideration for frocking to a higher grade.

218. We determined that it was PERS-8's responsibility to review and approve or disapprove the requests that had been submitted to them for consideration. PERS-8, not RADM Heinrich, held the authority to approve an officer to be frocked in accordance with SECNAV Instruction 1420.2A. We viewed with concern the apparent loose application of the SECNAV instruction by NPC employees in this case and reported our findings about these two frockings to Commander, NPC.

219. We concluded, therefore, that RADM Heinrich did not make false official statements when he requested that b6 b7c k2 and b6 b7c k2 be frocked to Captain. Thereafter, when PERS-8 approved the frocking requests that RADM Heinrich submitted, it was not improper for him to officiate a ceremony to effect the frocking of two subordinate officers after approval for their frocking was granted by the proper higher authority.

Conclusion - Allegation #11

220. The allegation is not substantiated.

Commander Command Ashore Assignments

221. Allegation #12: That RADM Heinrich failed to act impartially with respect to the assignment of officers to Supply Corps Commander Command Ashore positions in violation of 5 C.F.R. 2635.101, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart A - General Provisions.

Findings of Fact - Allegation #12

222. The complainant alleged that RADM Heinrich "bypassed the CNO-directed Navy Command Board process in order to personally approve two officers for assignment to Command." According to the complainant, these officers, b6 b7c k2, and b6 b7c k2, had not been selected for command by the command screening board process and they were,

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therefore, not qualified to be assigned to the command positions they were assigned.

223. The FY-13 Supply Corps Commander Operational/Command Ashore Screen Board convened on 18 July 2012. One of the board's duties was to recommend eligible SC Officers for Commander Command Ashore assignment. [b6 b7c k2] and [b6 b7c k2] were eligible officers and they were considered by the FY-13 board.

224. [b6 b7c k2] and [b6 b7c k2] were selected by the board but placed on the list of Officers Qualified but Insufficient Opportunity (QIO) for Command Ashore. In this QIO category, [b6 b7c k2] and [b6 b7c k2] and two other similarly situated officers would only be assigned to a command position if, for example, a regularly selected officer, on the command list, withdrew their name from the command list or retired.

225. [b6 b7c k2] researched NPC records and provided a written statement explaining the circumstances that lead to [b6 b7c k2] and [b6 b7c k2] being slated to command. He wrote:

In the cases of [b6 b7c k2] and [b6 b7c k2], we had to use the QIO list because the DLA stood up a new distribution command in Bahrain ... and DCMA Hampton Roads had an unplanned retirement with their sitting Commander...

Our procedures are to go to the QIO list. First on the list was [b6 b7c k2]. [b6 b7c k2] was not assigned command because [b6 b7c k2] had recently reported to a Joint Billet where the Time-On-Station is typically 36 months--although a waiver can be applied for at the 22 month point. [b6 b7c k2] had only been on station around 6 months, so [b6 b7c k2] was ineligible for a Joint Tour length waiver.

[b6 b7c k2] was assigned to Bahrain as there are no special skill requirements for the DLA Distribution sites.

[b6 b7c k2] was assigned to DCMA Hampton Roads because it is a contracting unit requiring a 1306 subspecialty-coded Commander. [b6 b7c k2] holds a

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1306S subspecialty code (LEVEL III Contracting and a member of the Defense Acquisition Corps.

Finally, O-5 detailing decisions (after the command board results are released) are handled largely by SUP OP (P-1) (Director of Detailing) along with all other SC CDR details. Senior leadership at DLA and DCMA were engaged [regarding] the resumes of these officers. NAVSUP was informed of the details but provided no direction counter to the SUP OP (P-1) plan.

Applicable Standard - Allegation #12

226. § 2635.101 Basic obligation of public service provides in part:

(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.

. . .

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

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Analysis - Allegation #12

227. The complainant alleged that RADM Heinrich approved two officers for command that had not been properly screened for command. We determined, however, that the officers in question had been properly selected by a properly formed selection board and in accordance with established NPC procedures. We further determined that the assignment of [REDACTED] and b6 b7c k2 [REDACTED] to their respective command positions was not directed by or otherwise improperly influenced by RADM Heinrich. Their respective assignments to command were accomplished by NPC in accordance with standard procedures for selected officers.

Conclusion - Allegation #12

228. The allegation is not substantiated.

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DEPARTMENT OF THE NAVY
NAVAL INSPECTOR GENERAL
1254 9TH STREET SE
WASHINGTON NAVY YARD DC 20374-5006

IN REPLY REFER TO:
5720/2014-000894
Ser OOK1/0605
11 Jun 14

This is a final response to your January 30, 2014, Freedom of Information Act (FOIA) request for a copy of "IG investigations into senior misconduct at Navy since Oct 1, 2012," as modified by your email on April 17, 2014. We have identified six investigations that respond to your inquiry, one of which was provided to you on April 21, 2014. Three of the cases are attached to this response and two are posted in the Naval Inspector's General public website reading room (<http://www.secnav.navy.mil/ig/Pages/FOIA/ReadingRoom.aspx>).

Your request has been processed in accordance with the FOIA. Potential fees associated with this response have been waived.

The redactions made in the reports are based on FOIA Exemptions (b)(6) and (b)(7)(c). FOIA Exemption (b)(7)(c) authorizes the Government to withhold names and other personal information contained in records compiled for investigatory or law enforcement purposes, which, if released, could be considered an unwarranted invasion of personal privacy. FOIA Exemption (b)(6) protects from disclosure material from personnel, medical or similar files, the disclosure of which would also constitute an unwarranted invasion of privacy.

Since your request has been denied in part, you are advised of your right to appeal this determination in writing to:

Department of the Navy
Office of the General Counsel
ATTN: FOIA Appeals - Room 4E635
1000 Navy Pentagon
Washington, DC 20350-1000

11 Jun 14

To be considered, any appeal you may wish to submit must be postmarked within 60 days from the date of this letter. The enclosed copy of this letter should be attached, along with a statement explaining why your appeal should be granted. It is recommended that the letter of appeal and the envelope both bear the notation, "Freedom of Information Act Appeal."

I am the official responsible for this decision, if you have any questions concerning this matter, my assistant, Ms. Pat Chase-Ramsey, is familiar with your request and may be of assistance. She may be reached at (202) 433-2222.

Sincerely,



Mark A. O'Brien
Assistant Counsel

Enclosures: (1) NAVINSGEN ROI 201300798
(2) NAVINSGEN ROI 201300862
(3) NAVINSGEN ROI 201300866
(4) Copy of this Letter

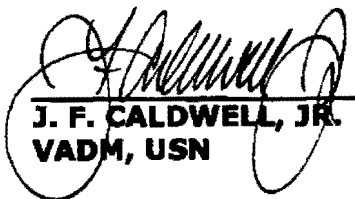
Enclosure (1)

NAVAL INSPECTOR GENERAL

REPORT OF INVESTIGATION

**Subj: SENIOR OFFICIAL CASE 201300798; ALLEGED MISCONDUCT BY
RADM PAUL V. SHEBALIN, USNR (RET), PROFESSOR OF THE
PRACTICE OF SYSTEMS ENGINEERING AND DIRECTOR, WAYNE E.
MEYER INSTITUTE OF SYSTEMS ENGINEERING, DEPARTMENT OF
SYSTEMS ENGINEERING, GRADUATE SCHOOL OF ENGINEERING AND
APPLIED SCIENCES, NAVAL POSTGRADUATE SCHOOL**




J. F. CALDWELL, JR.
VADM, USN

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Office of the Naval Inspector General**Case Number: 201300798****Report of Investigation****26 Nov 2013**

Subj: SENIOR OFFICIAL CASE 201300798; ALLEGED MISCONDUCT
RADM PAUL V. SHEBALIN, USNR (RET), PROFESSOR OF THE
PRACTICE OF SYSTEMS ENGINEERING AND DIRECTOR, WAYNE E.
MEYER INSTITUTE OF SYSTEMS ENGINEERING, DEPARTMENT OF
SYSTEMS ENGINEERING, GRADUATE SCHOOL OF ENGINEERING AND
APPLIED SCIENCES, NAVAL POSTGRADUATE SCHOOL

Preliminary Statement

1. On November 21, 2012, the Naval Inspector General issued two Reports of Investigation (ROIs) documenting its investigation of allegations of misconduct by Vice Admiral Daniel T. Oliver, USN (Ret), Naval Postgraduate School (NPS) President (Number 201103025), and Dr. Leonard A. Ferrari, NPS Executive Vice President and Provost (Number 201203847).

2. While investigating the allegations of misconduct by President Oliver and Dr. Ferrari, we discovered separate instances of potential misconduct by various NPS faculty and staff members. One area of potential misconduct that we identified was that various faculty and staff members at NPS, including RADM Shebalin, a civilian full time Department of the Navy (DON) employee, solicited the NPS Foundation (Foundation) and accepted gifts on behalf of the U.S. Navy in violation of the applicable gift acceptance statute and regulations. In most instances the gifts were checks to reimburse faculty and staff for expenses that they incurred for events that were related to the operation of NPS. In other instances, the Foundation made payments to vendors for goods and services, such as meals, that NPS faculty and staff members arranged and that were related to the operation of NPS.

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3. The Foundation is a non-profit charitable organization whose primary mission is to support NPS.¹ The Foundation supports NPS through gifts of money and property.

4. As discussed below, the Chief of Naval Operations (CNO) delegated gift acceptance authority to the President, NPS, for gifts of \$12,000 or less. No one else at NPS has authority to accept gifts for the Navy. Gifts greater than \$12,000 can only be accepted by the Secretary of the Navy, CNO, Vice Chief of Naval Operations (VCNO), and Director of Navy Staff and other very senior officials.

5. The Assistant for Administration, Under Secretary of the Navy (AA/USN), deposits properly accepted monetary gifts into the Navy General Gift Fund. AA/USN, in turn, distributes the funds to NPS. At NPS, the funds are placed in the President's Gift Fund account.

6. The NPS Comptroller maintains the President's Gift Fund account. Within the President's Gift Fund, there are accounts for various positions and purposes. These accounts enable the Foundation or other donors to make directed (earmarked) gifts for specific areas of research or study or to a specified school, department, institute, center, academic group, or faculty or staff member.

7. We formulated the following allegation:

Allegation: That RADM Paul V. Shebalin improperly solicited and accepted gifts from the Foundation on behalf of the U.S. Navy in violation of 10 United States Code (USC) 2601 and its implementing regulations.

Conclusion: The allegation is substantiated.

8. On November 14, 2013, we informed RADM Shebalin of our tentative conclusion that he improperly solicited and accepted

¹ The Foundation is recognized as exempt from federal tax under section 501(c)(3) of the Internal Revenue Code.

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gifts from the Foundation on behalf of the Navy. We provided RADM Shebalin the opportunity to comment on our tentative conclusion. In his response, dated November 20, 2013, RADM Shebalin stated that he had no comments regarding our tentative conclusion.

Background

9. RADM Shebalin is a Professor of The Practice of Systems Engineering and Director, Wayne E. Meyer Institute of Systems Engineering (Meyer Institute), Department Of Systems Engineering, Graduate School of Engineering and Applied Sciences, NPS. RADM Shebalin has been at NPS since 2003 and became the Director of the Meyer Institute in 2007. He retired from the Naval Reserve in 2007.

10. The Meyer Institute is one of four NPS institutes. The Meyer Institute web-page lists the institute's mission and goals:

- Establishes and conducts NPS-wide, interdisciplinary research programs for the Navy, DoD and other National Security customers.
- Fosters and encourages NPS faculty and students to apply their talents to answering the high-priority questions in defense systems science, technology, and engineering.
- Supports, facilitates and enables affiliated NPS faculty, visiting and adjunct faculty, and students to collaborate and conduct sponsored, interdisciplinary research and studies.
- Publicizes and shares the results of Meyer Institute-affiliated research.
- Provides a conduit to NPS faculty and students for defense contractor sponsored research.
- Supports the assigned Chair Professors - enables the Warfare Chairs and PEO-, Industry-, and other-sponsored Chair Professors to carry out their academic responsibilities

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11. During our investigation of President Oliver and Dr. Ferrari evidence gathered established that the Foundation also held an internal account for the Meyer Institute. The Foundation records established that Lockheed Martin donated money to the Foundation to fund the Meyer Institute account. The Foundation records were incomplete and we were unable to determine when the account was first established.

12. Foundation records include a letter dated July 22, 2009, in which Lockheed Martin donated \$10,000 to the Foundation for the Meyer Institute. The letter stated that the money was "for your appropriate use at the Wayne Meyer Institute at the Naval Postgraduate School." In 2010 and 2011, Lockheed Martin donated \$5,000 each year.

13. Foundation records establish that the Foundation reimbursed RADM Shebalin and faculty and staff members attached to the Meyer Institute with funds from the Meyer Institute account for various purchases. The records also establish that the Foundation made payments to vendors for the Meyer Institute with funds from the Meyer Institute account. The Foundation also paid honorariums to guests of the Meyer Institute.

Findings of Fact

14. On February 12, 2012, RADM Shebalin testified that if he or someone associated with the Meyer Institute purchased an item or incurred an expense related to the Institute, he or one of his deputies signed a reimbursement form that was delivered to the Foundation. Attached to the reimbursement forms were receipts for the purchases or expenses. Thereafter, the Foundation issued a check to RADM Shebalin or the person who had made the purchase or made a payment to a vendor.²

15. In 2010 and 2011, the Foundation issued a total of 53 checks to reimburse RADM Shebalin and other Meyer Institute faculty and staff members. Specifically, the Foundation issued

² RADM Shebalin is the only person associated with the Meyer Institute that we investigated. We limited our investigation to him because he is the Director.

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seven checks to RADM Shebalin. During that period, in addition to reimbursing RADM Shebalin and faculty and staff, the Foundation made 31 payments to Morale Welfare and Recreation (MWR) or vendors for goods or services for the Meyer Institute. In 2009, the Foundation made 50 reimbursements or payments to MWR or vendors.³ It also issued five honorariums to guests of the Meyer Institute. The aggregate amount for reimbursements, payments, and honorariums during the 3 years was greater than \$32,000.

16. RADM Shebalin testified that he believed that he was authorized to request reimbursements from the Foundation or have it pay vendors from its Meyer Institute account. He said that when he became the Director of the Meyer Institute in 2007, the outgoing Director told him about the Meyer Institute account at the Foundation and explained that the Foundation reimbursed Meyer Institute personnel for expenses and made payments to vendors that were related to the Meyer Institute's mission. He said that then-financial manager for the Meyer Institute also told him about the account at the Foundation and that it was used to support institute-related expenses.

17. RADM Shebalin said that each year the Foundation's Executive Director, RADM Merrill Ruck, USN (Ret), informed him when Lockheed Martin donated money. He testified that RADM Ruck contacted him by phone or e-mail and told him, "Hey, a donation has come in."

18. RADM Shebalin testified that the criteria he applied for using Meyer Institute account funds was "we had the funds. It was for a Meyer Institute mission item, and we wanted to get them in fairly quickly." He also stated:

It's under the mission. We had the funds with the foundation and they said, "This is how much we have for you in the foundation funds." It seemed like a good use of the funds.

³ For 2009 the Foundation records did not distinguish between a reimbursement check to a Meyer Institute faculty or staff member and a payment to a vendor.

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19. RADM Shebalin testified that no one recognized any personal gain.⁴ He said that all requests to the Foundation for reimbursements were supported with receipts. Foundation records include receipts for all expenditures from the Meyer Institute account.

20. The Foundation issued reimbursement checks to the Meyer Institute personnel or made payments to MWR and vendors for the following expenses:

- food at conferences
- dinners at restaurants, including alcoholic and non-alcoholic beverages
- \$100 gift certificate for a departing staff member
- replacement parts for a Lego robot
- conference fees
- travel expenses for students
- plaques and commemorative coins
- get-well cards

21. RADM Shebalin acknowledged that some of the expenses he approved were for items which he believed appropriated funds could not be used to purchase. The items he believed could not be purchased with appropriated funds included food, graduate receptions, get-well cards, awards, and commemorative coins.

22. In a letter to President Oliver, dated March 2, 2012, the Foundation offered a \$9,000 gift to NPS. The offer specified that the \$9,000 was provided to "establish a fund" with the NPS Comptroller's office. It further stated that the purpose of the gift was to support "Meyer Institute activities not officially funded" and that the "Meyer Institute Fund may be drawn upon

⁴ We found no evidence that any purchase was for private use, all expenses incurred were for the benefit of NPS.

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under the guidance of the director, currently Dr. Paul Shebalin." President Oliver subsequently accepted the gift on behalf of the Navy.

Applicable Standards

23. 10 USC 2601, General Gift Funds, grants the Secretary of Defense, the Secretary of the Navy, and other Service Secretaries authority to "accept, hold, administer, and spend any gift. . . ." This statute is one of several that authorize the acceptance of gifts to the DON. Of particular relevance to this inquiry are 10 USC 2601 requirements to deposit monetary gifts in the U.S. Treasury, to avoid accepting gifts that would reflect unfavorably on the Department, and to avoid accepting gifts that would compromise the integrity or appearance of integrity of any DON program.

24. While none of the various Department of the Navy gift statutes mention solicitation, a January 19, 2001, opinion of the Department of Justice Office of Legal Counsel states that similarly worded statutes authorizing the acceptance of gifts for itself (28 USC 524(d)(1)), the Office of Government Ethics (5 USC App 403(b)), the Department of State (22 USC 2697(a)), the Department of Commerce (15 USC 1522), and the Department of Treasury (31 USC 321(d)(1)) include the implicit authority to solicit gifts.

25. Volume 12, Chapter 30, Operation and Use of General Gift Funds, of the DoD Financial Management Regulation sets forth overall policy for acceptance of gifts under 10 USC 2601. Paragraph 300502 states:

Department of Defense personnel shall not solicit, fundraise for, or otherwise request or encourage the offer of a gift. Acceptance Authorities shall not accept gifts offered contrary to this policy.

26. SECNAVINST 4001.2J sets forth SECNAV's policy and procedures for acceptance of gifts, including money and personal and real property. The Instruction defines money as cash, checks, or other forms of negotiable instruments.

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27. The SECNAV Instruction authorizes CNO, VCNO, and Director of Navy Staff and other very senior officials to accept gifts subject to certain limitations. It permits the CNO to delegate certain gift acceptance authority to subordinates in his/her chain-of-command and establishes rules that apply to any Navy official in the gift acceptance process.

28. Paragraph 6b of the SECNAV Instruction prohibits solicitation by DON personnel unless it is "authorized by SECNAV." Paragraph 6g recognizes the value of foundations and other non-profit organizations in providing support to the Department.

29. Paragraph 7 provides instructions for processing gifts. For example, it requires donors to make checks payable to the DON and reiterates the statutory requirement that all gifts of money be deposited into the Treasury. The Instruction mandates that prospective donors be "advised to submit gift offers in writing explicitly specifying any conditions associated with gift acceptance." The Instruction also provides that, with limited exceptions for wounded or injured in the line or duty, services may not be accepted as gifts.⁵

30. OPNAVINST 4001.1F promulgates CNO's policies in connection with accepting and processing of gifts flowing from 10 USC 2601 and SECNAVINST 4001.2J. It does not address solicitation. This Instruction grants the NPS President express authority to accept gifts to the Navy of \$12,000 or less.⁶ The Instruction specifies various reporting requirements.

31. Two local instructions, NAVPGSCOLINST 4001.1E and NAVPGSCOLINST 4001.2B, set out further responsibilities and requirements regarding gifts to NPS.

32. Paragraph 5 of NAVPGSCOLINST 4001.1E prohibits solicitation, stating:

⁵ For purposes of this report, gift of services exemptions do not apply.

⁶ No other personnel at NPS are authorized to accept gifts to the Navy for any amount. Prior to 2010, the NPS President's authority to accept gifts was \$10,000 or less.

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NPS employees will not directly or indirectly solicit gifts for themselves, the Naval Postgraduate School, or for the Navy under any circumstances. Gifts offered as a result of solicitation will not be accepted. NPS employees must not refer a potential donor to any non-Federal entity.

33. Paragraph 6, Gifts from Foundations, contains language about gifts from foundations that is similar to the language in paragraph 6g of the SECNAV instruction.

34. Paragraph 7, Reimbursements, states:

NPS employees may not accept reimbursement from a non-Federal entity for expenses that support the school or its mission.⁷ Should a non-Federal entity offer to support a school related function or event, then that offer must be processed in accordance with this instruction.

35. NAVPGSCOLINST 4001.2B defines the President's Gift Fund as:

Composed of donations of funds that are available for expenditures for any purpose within the mission of the NPS and at the discretion of the President.

Analysis

36. We concluded that RADM Shebalin improperly solicited or accepted gifts from the Foundation on behalf of the US Navy in violation of 10 USC 2601 and its implementing regulations.

37. As a preliminary matter, we note that if the Foundation intended to support RADM Shebalin and the Meyer Institute as it did, it should have formally offered the gift to NPS and specified that the purpose of the gift was to support the Meyer Institute as it did in March 2012.

38. We determined that each time RADM Shebalin requested reimbursement, the Foundation paid an honorarium, or the

⁷ The Foundation is a non-Federal entity.

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Foundation made a payment to MWR or a vendor for goods and services incurred by Meyer Institute personnel, RADM Shebalin improperly solicited a gift from the Foundation. Each time he accepted a reimbursement check or the Foundation issued an honorarium or made a payment to MWR or a vendor RADM Shebalin improperly accepted a gift on behalf of the Navy.

39. We determined that RADM Shebalin did not intend to violate the rules regarding gifts. Rather, we found that he was ignorant of the rules. We further found RADM Shebalin's ignorance of the gift rules not unreasonable based on the facts before him. Specifically, RADM Shebalin relied on the information he received from his predecessor when he became the Director of the Meyer Institute. RADM Shebalin simply continued an improper process that was then in place.

40. We noted that RADM Shebalin testified that he used the Meyer Institute account funds from the Foundation to pay for items for which appropriated funds could not be used. We did not find this fact to be evidence that he believed that using the Meyer Institute account funds was improper. Rather, we concluded that RADM Shebalin simply used a funding source that was made available to him.

41. We concluded that RADM Shebalin realized no personal gain from Meyer Institute account and that the funds were used to support the Meyer Institute. The lack of personal gain is mitigating.

42. Nonetheless, we concluded that RADM Shebalin improperly solicited and accepted gifts from the Foundation on behalf of the US Navy.

Conclusion

43. The allegation is substantiated.

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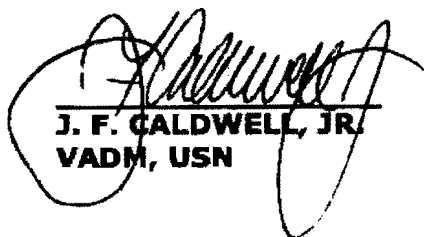
ENCLOSURE (2)

NAVAL INSPECTOR GENERAL

REPORT OF INVESTIGATION

**Subj: SENIOR OFFICIAL CASE 201300862; ALLEGED MISCONDUCT
RADM MERRILL RUCK, USN (RET), FORMER-EXECUTIVE DIRECTOR,
NAVAL POSTGRADUATE SCHOOL FOUNDATION**




**J. F. CALDWELL, JR.
VADM, USN**

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Office of the Naval Inspector General**Case Number: 201300862****Report of Investigation****27 Mar 2014**

Subj: SENIOR OFFICIAL CASE 201300862; ALLEGED MISCONDUCT
RADM MERRILL RUCK, USN (RET), FORMER-EXECUTIVE DIRECTOR,
NAVAL POSTGRADUATE SCHOOL FOUNDATION

Preliminary Statement

1. On November 21, 2012, the Naval Inspector General issued two Reports of Investigation (ROIs) documenting its investigation of allegations of misconduct by Vice Admiral Daniel T. Oliver, USN (Ret), Naval Postgraduate School (NPS) President (Number 201103025), and Dr. Leonard A. Ferrari, NPS Executive Vice President and Provost (Number 201203847).
2. While investigating the allegations of misconduct by President Oliver and Dr. Ferrari, we discovered separate instances of potential misconduct by various NPS faculty and staff members. One area of potential misconduct that we identified was that various faculty and staff members at NPS solicited the NPS Foundation (Foundation) and accepted gifts on behalf of the U.S. Navy in violation of the applicable gift acceptance statute and regulations. In most instances the gifts were checks to reimburse faculty and staff for expenses that they incurred for events that were related to the operation of NPS. In other instances, the Foundation made payments to vendors for goods and services, such as meals, that NPS faculty and staff members arranged and that were related to the operation of NPS.

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3. The Foundation is a non-profit charitable organization whose primary mission is to support NPS.¹ The Foundation supports NPS through gifts of money and property.

4. Chief Naval Operations (CNO) delegated gift acceptance authority to the President, NPS, for gifts of \$12,000 or less. No one else at NPS has authority to accept gifts for the Navy. Gifts greater than \$12,000 can only be accepted by the Secretary of the Navy, CNO, Vice Chief Naval Operations, and Director of Navy Staff and other very senior officials. Department of Defense personnel are prohibited from soliciting gifts.

5. The Assistant for Administration, Under Secretary of the Navy (AA/USN), deposits properly accepted monetary gifts into the Navy General Gift Fund. AA/USN, in turn, distributes the funds to NPS. At NPS, the funds are placed in the President's Gift Fund account.

6. The NPS Comptroller maintains the President's Gift Fund account. Within the President's Gift Fund, there are accounts for various positions and purposes. These accounts enable the Foundation or other donors to make directed (earmarked) gifts for specific areas of research or study or to a specified school, department, institute, center, academic group, or faculty or staff member.

7. Merrill Ruck, USN (Ret), was the Foundation's Executive Director from May 2006 to November 2013. We documented in the Oliver and Ferrari Reports of Investigation, as well as eleven subsequent Reports of Investigation, that the Foundation reimbursed NPS faculty and staff at RADM Ruck's direction. He also authorized the Foundation to make payments to vendors for goods and services, such as meals, that NPS faculty and staff members arranged and that were related to the operation of NPS. We found that these payments were gifts to the Navy that were improperly accepted by the NPS faculty and staff.

8. In two Reports of Investigation we documented that RADM Ruck authorized payments from a Foundation account to NPS faculty

¹ The Foundation is recognized as exempt from federal tax under section 501(c)(3) of the Internal Revenue Code.

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members to supplement their salaries. These payments are addressed in this ROI.

9. We formulated the following allegation:

Allegation: That RADM Ruck authorized the payment of money by the Naval Post Graduate School Foundation to [REDACTED], [REDACTED], and [REDACTED] in violation of 18 United States Code (USC) 209(a), Salary of Government officials and employees payable only by United States.²

Conclusion: The allegation is substantiated.

Findings of Fact

10. Navis is a private corporation that developed software for managing logistics and container terminal operating systems for cargo movement through ports.³ On March 31, 2005, Navis donated \$25,000 to the Foundation. On August 7, 2007, Navis donated an additional \$40,000 to the Foundation. In the letters to the Foundation accompanying the donations, Navis stated that it intended that the donations be used to support the Department of Operations Research (OR) at NPS.

11. After receiving the donations from Navis, the Foundation did not offer Navis's gift to NPS. Instead it deposited the funds into an internal Foundation account, the Navis account. With funds from the Navis account, the Foundation issued nine checks to three OR Department professors, [REDACTED], [REDACTED], and [REDACTED].

12. [REDACTED] and [REDACTED] are subjects of prior investigations. In our ROIs [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] we determined they [REDACTED] accepted money from the Foundation in violation of 18 USC 209(a). We found that each of

² 18 USC 209(a) is a criminal statute. Accordingly, we coordinated with the Naval Criminal Investigative Service, Assistants from the Office of the United States Attorney for the Northern District of California, and an Internal Revenue Service Special Agent before initiating this investigation.

³ Navis was purchased by another corporation and no longer exists.

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the checks that the Foundation issued to [REDACTED] and [REDACTED] was compensation for performance of their duties as professors at NPS.

13. [REDACTED] was not a subject of a Naval Inspector General investigation. The evidence established that [REDACTED] gave [REDACTED] a check from the Foundation for \$5,000. [REDACTED] testified that based on the fact that [REDACTED] was his [REDACTED]; he did not question the propriety of accepting the Foundation's check. [REDACTED] testified that when he presented the check to [REDACTED], he told him it was an award for his work assisting a student with a thesis. He added that [REDACTED] was unaware that the check was not an authorized award issued by the Foundation.

14. RADM Ruck declined to testify in this investigation. However, he provided a written statement in which he acknowledged that the Foundation issued nine checks, each for \$5,000, to [REDACTED], [REDACTED], and [REDACTED] (6 checks to [REDACTED], 2 Checks to [REDACTED], and 1 Check to [REDACTED]). Of the nine checks, seven were issued after RADM Ruck became the Foundation's Executive Director in May 2006 at RADM Ruck's direction.

15. [REDACTED] testified that the Foundation issued checks from the Navis account based on his recommendations. The only people that [REDACTED] identified for checks were [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] stated that checks were only for work that related to Navis's line of business. He testified:

These were awards that were made based on work that we had done, research that we had done, which was related to research that was found beneficial for this company called Navis.

16. [REDACTED] testified that the Foundation set the conditions when a check could be issued. He stated:

They said that they could make awards available if it was research that was found to be related or along the lines of research that would be beneficial for - or

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beneficial is perhaps not the right word - but related to work of the type that Navis would find beneficial.

17. Regarding the criteria for what was appropriate work for a check, [REDACTED] stated that the Foundation did not give him guidance. He stated, "the criteria . . . were not specifically spelled out."

18. [REDACTED] testified that Navis provided topics about which they were interested. He said that he in turn recommended topics to students on which to research and write their theses. He stated that he recommended more topics to students than those which Navis had an interest.

19. [REDACTED] stated that the work for which he recommended that the Foundation give checks was either advising students on theses related to Navis's business or for presentations at conferences that were sponsored by Navis and were called NavisWorld.⁴ He testified the students who wrote the theses did not receive awards.

20. [REDACTED] also testified that all the work for which he asked for checks from the Foundation was official government work. He testified that advising students on their thesis was part of [REDACTED] and [REDACTED]'s official duties at NPS. He said, "It's absolutely part of our job." [REDACTED] also testified that presentations by [REDACTED] at NavisWorld conferences were part of [REDACTED]'s professional duties.

21. We discovered two e-mail exchanges between [REDACTED] and RADM Ruck that were related to issuing checks. On May 15, 2006, [REDACTED] sent an e-mail to RADM Ruck in which he provided what [REDACTED] characterized as "a brief summary of NPS involvement with Navis." On May 18, [REDACTED] and [REDACTED] each received a check for \$5,000 from the Foundation.

22. On June 1, 2009, [REDACTED] sent an e-mail to RADM Ruck in which he requested that the Foundation issue three checks, for \$5,000 each, to [REDACTED], [REDACTED], and [REDACTED].

⁴ [REDACTED] testified that NavisWorld conferences were "attended by several hundred people from around the world."

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wrote that the checks for (b) (6) and him were for advising students. The check for (b) (6) was for "his presentation last year at NavisWorld." Five minutes after receiving (b) (6)'s e-mail, RADM Ruck forwarded the e-mail to the Foundations' bookkeeper and wrote, "please make out the 3 checks for \$5,000" from the Navis account. The three checks are dated June 4 and all signed by RADM Ruck.

23. (b) (6) acknowledged that he received a check from the Foundation in 2006 but testified that he could not recall why it was issued. Regarding the 2009 check, (b) (6) testified that a student that he was advising was the primary presenter at a presentation at NavisWorld in 2008 for which (b) (6) received \$5,000 in 2009. He stated he stood with the student during the presentation and fielded questions after the presentation.⁵ (b) (6) said he did not recall whether he was in a leave status at the time, but considered his presence part of his official duties as an NPS faculty member.

24. In his statement, RADM Ruck asserted that the checks issued to (b) (6) and (b) (6) were "awards for excellence in scientific research." He stated that checks were issued "[u]nder the provisions" of NAVPGSCOLINST 1650.1E, "The Naval Postgraduate School Foundation Research Award for Excellence in Scientific Research." He characterized the checks that the Foundation issued to (b) (6) as "honoraria."

Applicable Standard

25. 18 USC 209(a) prohibits executive branch employees from receiving "any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government . . . from any source other than the Government of the United States."

⁵ In an e-mail (b) (6), (b) (6) sent RADM Ruck on March 19, 2008, (b) (6) characterized the presentation differently. In that e-mail he wrote that he had agreed to deliver "a keynote address" at the upcoming Navis World.

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26. 18 USC 209(a) further states:

Whoever, whether an individual, partnership, association, corporation, or other organization pays, makes any contribution to, or in any way supplements, the salary of any such officer or employee under circumstances which would make its receipt a violation of this subsection--

Shall be subject to the penalties set forth in section

27. 18 USC 216 provides that both criminal and civil actions may be brought under 18 USC 209(a). 18 USC 216(b) states that the standard of proof in a civil action for conduct constituting an offence under 18 USC 209(a) is proof by a preponderance of the evidence.⁶

28. Our investigations are administrative. As such, a preponderance of the evidence standard of proof is applicable.

29. Section 209(a) has four elements, each of which must be established by a preponderance of the evidence, in order to substantiate an allegation. The elements are:

- (1) receipt of salary or contribution to or supplementation of salary,
- (2) as compensation,
- (3) for services as an employee of the United States, and
- (4) from any source other than the Government of the United States.

30. In applying 18 USC 209(a) we look to the Office of Government Ethics, Memorandum dated July 1, 2002, from Amy L. Comstock, Director, to Designated Agency Ethics Officials Regarding 18 USC 209 Guidance (OGE Memo). That memorandum addresses each of the elements of Section 209(a).

⁶ In a criminal prosecution the standard of proof is beyond a reasonable doubt.

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31. The OGE Memo states that salary or a contribution to or supplement of salary "can be any thing of monetary value received by an employee." The memorandum identifies both one-time payments and periodic payments.

32. The second element, compensation, requires "a connection between the public employment and the private payment." The OGE Memo states:

Specifically, the payment must be compensation for undertaking or performing Government service. To make out an offense under section 209, there must be a direct linkage between the thing of value paid to the employee and the official services rendered by the employee.

33. The third element requires that the employee rendered a Government service. The Memorandum states:

a violation of section 209 requires that compensation be paid for "the services an employee provides, or is expected to provide, to the Government."

34. The final element is that the payment must be from a source other than the Government of the United States.

35. The OGE Memo also states that *bona fide* public service awards do not violate section 209 because "intent to compensate for Government services cannot be inferred." As an example, the OGE Memo states that where an organization "applied long-standing written criteria in judging all of the candidates," such an award is a *bona fide* public service award. The OGE Memo also references an earlier Department of Justice, Office of Legal Counsel (OLC) opinion in which OLC stated that they "have recognized implicit exceptions [to section 209] for commemorative awards for public service."⁷

⁷ Gifts Received on Official Travel, 8 Op. Off. Legal Counsel 143 (1984).

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Analysis

36. In addressing whether RADM Ruck violated 18 USC 209(a), we must first determine whether the receipt of the checks by [REDACTED], [REDACTED], and [REDACTED] was a violation of section 209.⁸

37. As we reported in our [REDACTED] and [REDACTED] ROIs, we determined that [REDACTED] and [REDACTED] accepted payments to supplement their salaries in violation of 18 USC 209(a). The testimonial and documentary evidence established, by a preponderance of the evidence, each of the four elements of 18 USC 209(a). They are:

- (1) [REDACTED], [REDACTED], and [REDACTED] received a monetary contribution to or supplementation of salary. The Foundation issued to them nine checks, each check was for \$5,000.
- (2) The Foundation compensated [REDACTED], [REDACTED], and [REDACTED]. The checks issued from the Foundation to them were directly linked to their employment as NPS faculty members. [REDACTED] testified that the Foundation issued the checks based on his requests and that he only made requests based on work that [REDACTED], [REDACTED], and [REDACTED] performed that was related to their official duty.
- (3) [REDACTED], [REDACTED], and [REDACTED] received the compensation for performing their official duties as professors in the OR department. [REDACTED] testified that the Foundation set conditions for when a check was appropriate. He said that checks were for research that was beneficial to Navis and that the work for which he recommended that the Foundation give checks was either advising students on theses related to Navis's business or for making a presentation at a conference on a topic related to Navis. He also testified that all the work for which he recommended checks was for official work as an NPS faculty member.

⁸ Although we did not find that [REDACTED] violated 18 USC 209(a) for the reasons stated above, we did conclude that the \$5,000 paid by the Foundation was a supplement of his income. Accordingly, for purposes of assessing RADM Ruck's conduct, we included the check that was issued to [REDACTED].

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(4) The payments came from the Foundation, a source other than the Government of the United States.

38. Next, we must determine whether RADM Ruck supplemented [REDACTED], [REDACTED], (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) salaries for performing their official government duties. We determined that the evidence established that RADM Ruck authorized the Foundation's bookkeeper to issue seven of the checks, beginning in May 2006.

39. We determined that the checks to [REDACTED] and [REDACTED] were not "awards for excellence in scientific research" as asserted by RADM Ruck. NAVPGSCOLINST 1650.1E sets out a nomination process that was not complied with regarding the checks that were issued from the Navis account. It states that nominations "must be submitted electronically to the Executive Director of the NPS Foundation and the Dean of Research." It also states that the Dean of Research and the Foundation Executive Director will accept nominations that include:

- a. A brief but complete description of the research project (no more than 5 pages), its achievement(s), the role/involvement of the NPS students in the work, and its potential transformational impact on the Department of Defense or industry.
- b. Copies of not more than three papers/reports that provide evidence in support of the nomination.
- c. A brief (maximum of two pages) resume of each nominee.

40. The requirements for an award pursuant to NAVPGSCOLINST 1650.1E were not met. Accordingly, we determined that the checks were not awards as RADM Ruck asserted, but payments in violation of 18 USC 209(a).

41. We also determined that even if the checks for [REDACTED] were characterized as honoraria, they were issued to [REDACTED] in violation of 18 USC 209(a). Honoraria paid to federal employees for presentations related to their official duties violate 18 USC 209(a) absent special circumstances.

Conclusion

42. The allegation is substantiated.

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Other Matter

43. We established in the Oliver and Ferrari ROIs, as well as eleven subsequent ROIs, that NPS faculty and staff improperly solicited and accepted gifts on behalf of the Navy from the Foundation in violation of the applicable gift acceptance statute and regulations. In many of these ROIs we found that RADM Ruck told a faculty or staff member that there were funds available to them and that the Foundation could and would reimburse the faculty or staff member for job related expenses they incurred. We found that in some instances, the faculty or staff member relied upon RADM Ruck and believed that what he was offering was authorized. In most instances, the faculty or staff member used the funds from the Foundation for items that the NPS Comptroller would have paid for from the President's Gift Fund.

44. RADM Ruck testified as a witness in our investigation of VADM Oliver that the funds came from donors who contributed funds to the Foundation for specific faculty members or purposes. He said that rather than gift those funds to the Navy, he contacted the faculty member and let them know that the funds were available for their use in an account at the Foundation. Thereafter, RADM Ruck authorized reimbursements from the accounts.

45. There were examples that were more aggravating than just reimbursing faculty and staff or paying vendors. For instance, RADM Ruck permitted a NPS staff member to direct a NATO employee to send a check for more than \$41,000 to the Foundation. The funds were placed into an account at the Foundation that the staff member later drew upon to fund meals and entertainment related to NPS events. In another instance, RADM Ruck approved a plan where receipts from ticket sales for two galas and a golf tournament, more than \$81,000, were deposited into a Foundation account. In both instances, the Foundation retained from 8 to 10 percent of the deposited funds (more than \$10,000) as administrative expenses. We found that in both instances the Foundation was used because faculty or staff members believed

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that the funds could not be accepted by the Navy and used for the targeted purpose.

46. We determined that based on RADM Ruck's position and experience he should have known that he was improperly avoiding the gift statute and applicable guidance. His failure to comply with the requirements had a negative impact on NPS and on the faculty and staff members that relied upon him.

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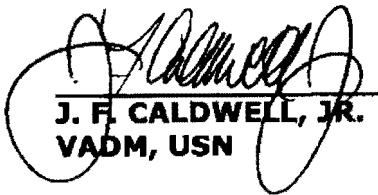
ENCLOSURE (3)

NAVAL INSPECTOR GENERAL

REPORT OF INVESTIGATION

**Subj: SENIOR OFFICIAL CASE 201300866; ALLEGED MISCONDUCT BY
VICE ADMIRAL PHILIP M. QUAST, USN (RET), SENIOR LECTURER,
UNITED STATES PARTNERSHIP FOR PEACE TRAINING CENTER,
NAVAL POSTGRADUATE SCHOOL**




J. F. CALDWELL, JR.
VADM, USN

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Office of the Naval Inspector General

Case Number: 201300866

Report of Investigation

10 Jan 2014

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VICE ADMIRAL PHILIP M. QUAST, USN (RET), SENIOR LECTURER,
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Preliminary Statement

1. On November 30, 2009, we issued Report of Investigation (ROI) Number 200900253, stemming from allegations of misuse of appropriated funds by VADM Philip M. Quast, USN (Ret). We found, among other things, that the Naval Postgraduate School Foundation (the Foundation) reimbursed VADM Quast and Government and contractor employees assigned to the Center for Executive Education (CEE) for the purchase of alcoholic and non-alcoholic beverages that were served at official events.
2. The ROI included a substantiated allegation that VADM Quast:

on more than one occasion improperly accepted gifts on behalf of the Navy from the NPS Foundation, in violation of 10 USC § 2601, SECNAVINST 4001.2J, and NAVPGSCOLINST 4001.1D.
3. In a letter dated May 27, 2010, VADM Daniel T. Oliver, USN (Ret), the Naval Postgraduate School (NPS) President, informed us that he had reviewed the ROI and taken action against VADM Quast for his "substantiated ethical violations." This included action in response to VADM Quast's ethical violation of accepting gifts on behalf of the Navy from the NPS Foundation.
4. On November 21, 2012, we issued two ROIs documenting our investigation of allegations of misconduct by President Oliver

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(Number 201103025), and Dr. Leonard A. Ferrari, NPS Executive Vice President and Provost (Number 201203847).

5. While investigating the allegations of misconduct by President Oliver and Dr. Ferrari, we discovered evidence that VADM Quast may have improperly solicited funds from the Foundation and accepted gifts on behalf of the U.S. Navy in addition to those documented in the November 30, 2009, ROI. We address those instances of soliciting and accepting gifts on behalf of the Navy in this report.

6. The Foundation is a non-profit charitable organization whose primary mission is to support NPS.¹ The Foundation supports NPS through gifts of money and property.

7. As discussed below, the Chief of Naval Operations (CNO) delegated gift acceptance authority to the President, NPS, for gifts of \$12,000 or less. No one else at NPS has authority to accept gifts for the Navy. Gifts greater than \$12,000 can only be accepted by the Secretary of the Navy, CNO, Vice Chief of Naval Operations (VCNO), and Director of Navy Staff and other very senior officials.

8. The Assistant for Administration, Under Secretary of the Navy (AA/USN), deposits properly accepted monetary gifts into the Navy General Gift Fund. AA/USN, in turn, distributes the funds to NPS. At NPS, the funds are placed in the President's Gift Fund account.

9. The NPS Comptroller maintains the President's Gift Fund account. Within the President's Gift Fund, there are accounts for various positions and purposes. These accounts enable the Foundation or other donors to make directed (earmarked) gifts for specific areas of research or study or to a specified school, department, institute, center, academic group, or faculty or staff member.

¹ The Foundation is recognized as exempt from federal tax under section 501(c) (3) of the Internal Revenue Code.

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10. We formulated the following allegation:

Allegation: That VADM Philip M. Quast solicited and accepted gifts from the Foundation on behalf of the U.S. Navy, in violation of 10 United States Code (USC) 2601 and its implementing regulations.

Conclusion: The allegation is substantiated.

11. On November 13, 2013, we informed VADM Quast of our tentative conclusion that he improperly solicited and accepted gifts from the Foundation on behalf of the Navy. We provided VADM Quast with a copy of our preliminary report of investigation and gave him the opportunity to comment on our tentative conclusion. In his response, dated November 22, 2013, VADM Quast disagreed with our conclusion. He asserted that we failed to adequately consider the context and background surrounding his conduct. VADM Quast denied knowing that when he solicited and accepted gifts from the Foundation on behalf of the Navy that such conduct was prohibited. VADM Quast did not dispute the facts concerning his conduct.

12. We address VADM Quast's comments after the analysis of this report. Additionally, we provided a copy of his full response to the cognizant management officials together with this report.

Background

13. From 2002 to October 2010, VADM Quast served as the Navy's Executive Learning Officer (ELO) and was assigned at CEE. In September 2010, VADM Quast became a Senior Lecturer for the Global Public Policy Academic Group. On March 11, 2012, VADM Quast's position was realigned to a Senior Lecturer for the United States Partnership for Peace Training Center at NPS.² In

² VADM Quast's personnel record includes the following personnel actions that are reflected on Standard Form 50s: June 1, 2010, VADM Quast's appointment as ELO was extended until September 30, 2010; June 1, 2010, VADM Quast was placed in a Leave Without Pay status; September 2, 2010, VADM Quast was returned to duty in a pay status; September 28, 2010, VADM Quast was appointed as a Senior Lecturer for the Global Public Policy Academic Group; and March 11, 2012, VADM Quast position was realigned to Senior Lecturer for the United States Partnership for Peace Training Center.

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each position at NPS VADM Quast was a civilian full time Department of the Navy (DON) employee.

14. As part of our 2009 investigation of allegations that VADM Quast misused appropriated funds, we interviewed VADM Quast on June 4, 2009. At that interview VADM Quast said he was not aware of regulations that controlled gifts between the Foundation and NPS.

15. VADM Quast testified that during the time he was the ELO, retired flag officers had approached him with offers to make donations to his office. He said that in response to the offers he spoke with the Foundation's Executive Director, RADM Merrill Ruck, USN (Ret), in order to arrange a process for the Foundation to receive gifts and make them available to VADM Quast and CEE personnel. VADM Quast testified, "We set up a procedure whereby people could donate money if they wanted to and I would go to the Foundation and ask for entertainment funds."

16. Regarding his lack of knowledge of the Navy's gift acceptance authorities VADM Quast stated at the June 4, 2009, interview:

So whether there are regulations like you referred to, I'm not aware of them and I didn't -- if there are then in my opinion that's the Foundation's responsibility. I set up the alignment with the Foundation the way they wanted it.

17. Our investigator commented to VADM Quast during the interview:

. . . it just seems in looking at the instruction and then looking at the letter it's almost like it's ELO is soliciting funds, if you will, from the Foundation, saying, "We're requesting a check in this amount and then please make it out to this person and here's a receipt for what we spent." From what I can tell the government isn't supposed to do that.

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18. As part of the investigations of misconduct by President Oliver and Dr. Ferrari, we reviewed Foundation records for the period of 2009 to 2012. During the review of the Foundation's records, we discovered that the Foundation issued checks to VADM Quast or to vendors on behalf of CEE subsequent to the June 4, 2009, interview. The checks were:

- Dated September 11, 2009, to VADM Quast for \$228.38 to reimburse him for expenses for beer and wine served at an ELO course at the University of North Carolina;³
- Dated October 6, 2009, to a vendor for \$894.80 to pay for beer and wine served at two receptions during a Navy Executive Business Course held at the University of North Carolina from September 8 to 18, 2009;⁴
- Dated January 21, 2010, to Tarpy's Roadhouse Restaurant for \$222.50 for table and linen rentals and a transportation fee. The Foundation's records included a form dated December 23, 2009, that VADM Quast signed in which he requested the check; and
- Dated February 16, 2010, to Montrio Bistro for \$160. The Foundation records included an e-mail from RADM Ruck sent on February 17, 2010, to the Foundation's bookkeeper.⁵ In the e-mail RADM Ruck wrote, "Pease make a check out to Montrio Bistro for \$160. . . . It is to pay for 4 dinners for 4 speakers. Someone from VADM Phil Quast's office will pick up the check tomorrow."

Findings of Fact

19. As part of this investigation, we interviewed VADM Quast on December 4, 2012. VADM Quast also provided a written statement, dated May 24, 2013, which he incorporated into his sworn testimony.

³ This check was not addressed in our November 30, 2009, ROI because we were not aware of it at the time of our report.

⁴ This check was not addressed in our November 30, 2009, ROI because we were not aware of it at the time of our report.

⁵ The check is misdated. It should have been dated subsequent to RADM Ruck's February 17, 2010, e-mail.

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20. VADM Quast testified that after the June 4, 2009, interview he had concerns about what was appropriate with regard to dealings with the Foundation. He testified, "I had an opinion that was questionable, so I took it to the school and said, again, what is the proper procedure? What are the ground rules of using the foundation."

21. VADM Quast said that he spoke with President Oliver two or three times about the Foundation because "we need guidance." He testified:

it was confusing to me that (a) there was no written guidance and now at this point in time, I'm wondering why we don't have anything on paper because the word of mouth goes just so far these days, particularly when the IG starts entering into the situation. So I actually advised him based on the interviews I had that we ought to figure out what the heck the story is here because I feel like we're getting into something.

22. VADM Quast stated that President Oliver responded to his request by "nodding his head." VADM Quast said he inferred from President Oliver's nodding that "he was going to do something." VADM Quast added, "He [President Oliver] listened politely and I thought that I'd see some action. I never saw any changes."

23. VADM Quast also stated that other than bringing his concern to President Oliver that guidance for dealing with the Foundation should be issued, he had no further discussions about the Foundation with President Oliver.

24. VADM Quast testified that he received a copy of the November 30, 2009, Naval IG's report many months after November 2009.⁶ VADM Quast stated he had no recollection of President Oliver ever counseling him regarding the report findings or otherwise discussing the findings.

25. VADM Quast testified that he also spoke with RADM Ruck after the June 4, 2009, interview. VADM Quast stated that

⁶ We have no evidence that VADM Quast saw the ROI or was told of the findings prior to February 16, 2010, the date of the last of the Foundation's payments relevant to this investigation.

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RADM Ruck told him the process that they had in place was proper and VADM Quast should continue to make requests directly to the Foundation.

26. VADM Quast testified that he did not seek guidance regarding payments by the Foundation from [REDACTED] or [REDACTED]. VADM Quast stated that subsequent to his interview on June 4, 2009, no one at NPS told him that he was authorized to request reimbursement from the Foundation or have the Foundation make payments on his behalf. He testified:

I can't say that anyone said that, but they didn't seem to be concerned. They didn't say no, you can't do this. Yes, you can. I guess it was, you know, they were steaming as before, continuing to do what they thought was right.

27. In his May 24, 2013, statement VADM Quast stated that as a retired Flag officer he was "well-familiar with Non-Federal Entities (NFEs)." He stated that "it was never apparent" that the Foundation was an NFE. Factors that VADM Quast listed that affected his perception of the Foundation's status were:

The Foundation maintained office on-base, in the school's administrative building. Foundation leadership was in close proximity to the school's leadership; both organizations were under the direction of retired senior naval officers; and the [NPS and foundation] leaders had regularly recurring weekly meetings.

28. VADM Quast also addressed that he understood that NPS was prohibited from accepting support from NFEs, but he believed that the Foundation was different. He wrote:

I recognized that NPS could not accept support from the private sector and that the Foundation was organized as a mechanism that could do so. In that regard, it didn't seem terribly different from an Nonappropriated Fund Instrumentality like Navy MWR which regularly entered into sponsorship agreements

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and seemed to have the ability to provide support that would not be otherwise possible.

29. Also in his May 24 statement, VADM Quast wrote that President Oliver and Dr. Ferrari "were aware of the Foundation's support and approved." He wrote that he frequently met with President Oliver and RADM Ruck "to ensure they were fully informed of ELO activities." He also stated that Navy senior leadership "was also made aware to the Foundation's support and indicated appreciation for that support."

30. VADM Quast also asserted in his statement that in 2009 "the rules for organizations such as the NPS Foundation and the Naval Academy Foundation were not yet clear, even to those responsible for enforcing those rules." In support of his assertion, VADM Quast provided an e-mail string, sent from July 31 to August 27, 2009, between (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), including (b) (6), (b) (7)(C). In the e-mails (b) (6), (b) (7)(C) stated that the Foundation made payments directly to vendors and also reimbursed CEE personnel. The (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were included as cc's on the e-mail string.⁷

31. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) did not respond to this e-mail string regarding the appropriateness of having the Foundation make payments or reimbursements on behalf of ELO and CEE. (b) (6), (b) (7)(C) did forward the entire e-mail chain to (b) (6), (b) (7)(C), and wrote, "I don't know if [the Naval Inspector General] would be interested in this."⁸

32. VADM Quast wrote in his May 24 statement that the June 4, 2009, interview "was more of an educational background" for the investigators. He stated that the investigators "never cited to me a regulation that was being violated." He added: "While the investigators questioned the process, they never came out and said regulation XYZ prohibits what you are doing."

⁷ VADM Quast was also cc'ed on the e-mail string.

⁸ Our investigation of VADM Quast was then on-going.

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33. Regarding the form that he signed on December 23, 2009, requesting reimbursement, VADM Quast testified that he had no recollection of signing the form and did not know why he would have signed it. He stated that a CEE subordinate must have filled out the form and asked him to sign it, and he therefore did sign the form.

34. In his May 24, 2013, written statement VADM Quast also addressed the check made payable to him, dated September 11, 2009, for \$228.38 to reimburse him for beer and wine served at an ELO course at the University of North Carolina; the check dated October 6, 2009, to a vendor for \$894.80 to pay for beer and wine served at two receptions during a Navy Executive Business Course held at the University of North Carolina; and the check dated February 16, 2010, to Montrio Bistro for \$160. Consistent with his testimony regarding the \$222.50 check to Tarpy's Roadhouse Restaurant, VADM Quast stated that he did not recall the facts surrounding the issuance of the checks. He wrote: "I regret to say that I do not have any specific recall of these actual instances nearly four years ago." He did, however, state that each of the checks was issued consistent with the practice that was in place at the time whereby the Foundation reimbursed VADM Quast or paid vendors for ELO-related expenses.

Applicable Standards

35. 10 USC 2601, General Gift Funds, grants the Secretary of Defense, the Secretary of the Navy, and other Service Secretaries authority to "accept, hold, administer, and spend any gift. . . ." This statute is one of several that authorize the acceptance of gifts to the DON. Of particular relevance to this inquiry are 10 USC 2601 requirements to deposit monetary gifts in the U.S. Treasury, to avoid accepting gifts that would reflect unfavorably on the Department, and to avoid accepting gifts that would compromise the integrity or appearance of integrity of any DON program.

36. While none of the various Department of the Navy gift statutes mention solicitation, a January 19, 2001, opinion of the Department of Justice Office of Legal Counsel states that

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similarly worded statutes authorizing the acceptance of gifts for itself (28 USC 524(d)(1)), the Office of Government Ethics (5 USC App 403(b)), the Department of State (22 USC 2697(a)), the Department of Commerce (15 USC 1522), and the Department of Treasury (31 USC 321(d)(1)) include the implicit authority to solicit gifts.

37. Volume 12, Chapter 30, Operation and Use of General Gift Funds, of the DoD Financial Management Regulation sets forth overall policy for acceptance of gifts under 10 USC 2601. Paragraph 300502 states:

Department of Defense personnel shall not solicit, fundraise for, or otherwise request or encourage the offer of a gift. Acceptance Authorities shall not accept gifts offered contrary to this policy.

38. SECNAVINST 4001.2J sets forth SECNAV's policy and procedures for acceptance of gifts, including money and personal and real property. The Instruction defines money as cash, checks, or other forms of negotiable instruments.

39. The SECNAV Instruction authorizes CNO, VCNO, and Director of Navy Staff and other very senior officials to accept gifts subject to certain limitations. It permits the CNO to delegate certain gift acceptance authority to subordinates in his/her chain-of-command and establishes rules that apply to any Navy official in the gift acceptance process.

40. Paragraph 6b of the SECNAV Instruction prohibits solicitation by DON personnel unless it is "authorized by SECNAV." Paragraph 6g recognizes the value of foundations and other non-profit organizations in providing support to the Department.

41. Paragraph 7 provides instructions for processing gifts. For example, it requires donors to make checks payable to the DON and reiterates the statutory requirement that all gifts of money be deposited into the Treasury. The Instruction mandates that prospective donors be "advised to submit gift offers in writing explicitly specifying any conditions associated with gift acceptance." The Instruction also provides that, with

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limited exceptions for wounded or injured in the line or duty, services may not be accepted as gifts.⁹

42. OPNAVINST 4001.1F promulgates CNO's policies in connection with accepting and processing of gifts flowing from 10 USC 2601 and SECNAVINST 4001.2J. It does not address solicitation. This Instruction grants the NPS President express authority to accept gifts to the Navy of \$12,000 or less.¹⁰ The Instruction specifies various reporting requirements.

43. Two local instructions, NAVPGSCOLINST 4001.1E and NAVPGSCOLINST 4001.2B, set out further responsibilities and requirements regarding gifts to NPS.

44. Paragraph 5 of NAVPGSCOLINST 4001.1E prohibits solicitation, stating:

NPS employees will not directly or indirectly solicit gifts for themselves, the Naval Postgraduate School, or for the Navy under any circumstances. Gifts offered as a result of solicitation will not be accepted. NPS employees must not refer a potential donor to any non-Federal entity.

45. Paragraph 6, Gifts from Foundations, contains language about gifts from foundations that is similar to the language in paragraph 6g of the SECNAV instruction.

46. Paragraph 7, Reimbursements, states:

NPS employees may not accept reimbursement from a non-Federal entity for expenses that support the school or its mission.¹¹ Should a non-Federal entity offer to support a school related function or event, then that offer must be processed in accordance with this instruction.

⁹ For purposes of this report, gift of services exemptions do not apply.

¹⁰ No other personnel at NPS are authorized to accept gifts to the Navy for any amount. Prior to 2010, the NPS President's authority to accept gifts was \$10,000 or less.

¹¹ The Foundation is a non-Federal entity.

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47. NAVPGSCOLINST 4001.2B defines the President's Gift Fund as:

Composed of donations of funds that are available for expenditures for any purpose within the mission of the NPS and at the discretion of the President.

Analysis

48. We concluded that VADM Quast improperly solicited and accepted gifts from the Foundation on behalf of the US Navy in violation of 10 USC 2601 and its implementing instructions. Pursuant to the applicable gift guidance, VADM Quast was not authorized to accept gifts on behalf of the Navy. Further, the requests made to the Foundation for reimbursement or payments to vendors were solicitations. Soliciting the Foundation for gifts is not permitted.

49. We determined that during our interview with VADM Quast on June 4, 2009, he was informed that accepting reimbursements or having the Foundation make payments was improper. His testimony on that day was, "So whether there are regulations like you referred to, I'm not aware of them. . . ."

50. VADM Quast testified that after the June 4, 2009, interview he voiced his concerns with President Oliver. He said that President Oliver nodded his head but took no further action. We determined that under the circumstances, VADM Quast did not have a reasonable justification to continue soliciting and accepting gifts from the Foundation simply because President Oliver failed to tell him to discontinue the practice.

51. We also determined that even if RADM Ruck told VADM Quast that the practice that was in place was appropriate and should continue, VADM Quast's reliance on RADM Ruck's advice was not reasonable. VADM Quast failed to seek guidance from appropriate NPS personnel, which included (b) (5), (b) (7)(C) and (b) (7)(D). Most telling, VADM Quast testified that no one said "no, you can't do this. . . . [Or] Yes, you can."

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VADM Quast's November 22, 2013, Response to Preliminary Report

52. In his response to our preliminary report, VADM Quast asserted that our investigator's comment to him during his June 4, 2009, interview that soliciting and accepting reimbursements from the Foundation was improper did not put him "on notice." He stated that "such innocuous comments must be considered from the perspective of the individual subjected to the 3-hour interview." He acknowledged, however, that the comment did prompt him to "raise the issue to the NPS President for clarification."

53. VADM Quast also stated that, in our preliminary report, we failed to consider the portions of his May 24, 2013, written statement. In his statement, he wrote that after the interview with our investigator, he spoke with President Oliver and RADM Ruck. VADM Quast wrote that President Oliver told him that he was not aware of any problems with soliciting and accepting reimbursements from the Foundation but would seek advice from (b) (6), (b) (7)(C) and inform VADM Quast "if any changes were required." VADM Quast also wrote that he informed RADM Ruck of the investigator's concerns. VADM Quast added, in his May 24 statement, that several weeks after speaking with President Oliver, he met with President Oliver again, and "He informed me that his staff was still working the issue but that no changes had been made." VADM Quast wrote that RADM Ruck gave him a similar response.

54. Finally, VADM Quast addressed the e-mail string, sent from July 31 to August 27, 2009, which we addressed above. This e-mail string was forwarded to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). In the e-mail, (b) (6), (b) (7)(C) stated that the Foundation made payments directly to vendors and also reimbursed CEE personnel. VADM Quast stated that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) "had every opportunity to step in and clarify the rules for everyone."

55. We were not persuaded by VADM Quast's assertions. We determined that VADM Quast had a reasonable doubt that soliciting and accepting reimbursements from the Foundation was improper. By his own testimony, VADM Quast acknowledged that he

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spoke with President Oliver and RADM Ruck based on the investigator's comments. We concluded that a reasonable prudent senior official with VADM Quast's experience and training should have sought and obtained a definitive ethics opinion and should have refrained from engaging in questionable conduct until he had the opinion. Accordingly, we stand by our conclusion.

56. We do note that (b) (6), (b) (7)(C) and (b) should have affirmatively acted on the e-mail and provided NPS leadership, faculty, and staff definitive guidance regarding accepting reimbursements or having the Foundation make payments.

Conclusion

57. The allegation is substantiated.

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ENCLOSURE (4)