

INVESTIGATING OFFICER'S REPORT

(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

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|---------------------------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------------------------------------------|----------------------------------------------------|
| 1a. FROM: <i>(Name of Investigating Officer - Last, First, MI)</i> Mitchell, Jonathan A. | b. GRADE O-4 | c. ORGANIZATION Naval Reserve Legal Service Office 209 | d. DATE OF REPORT 8 May 2011 |
| 2a. TO: <i>(Name of Officer who directed the Investigation - Last, First, MI)</i> Bethke, Steven G. | b. TITLE Commanding Officer | | c. ORGANIZATION Recruit Training Command |
| 3a. NAME OF ACCUSED <i>(Last, First, MI)</i> Smith, Craig R. | b. GRADE BMCS SW/AW | c. SSN xxx-xx-2514 | d. ORGANIZATION Recruit Training Command |
| | | | e. DATE OF CHARGES 28 Mar 2011 |

(Check appropriate answer)

| | YES | NO |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| 4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1) | X | |
| 5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below) | X | |
| 6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d) | X | |

| | | | |
|----------------------------------------------------------------------------------------|------------------------|---------------------------------------------------------------------------------------------------------------|------------------------|
| 7a. NAME OF DEFENSE COUNSEL <i>(Last, First, MI)</i> Faraj, Haytham | b. GRADE Civ | 8a. NAME OF ASSISTANT DEFENSE COUNSEL <i>(If any)</i> Gough, Charles | b. GRADE O-3 |
| c. ORGANIZATION <i>(If appropriate)</i> Civilian attorney | | c. ORGANIZATION <i>(If appropriate)</i> NLSO North Central Great Lakes | |
| d. ADDRESS <i>(If appropriate)</i> 1800 Diagonal Road Alexandria VA 22314 | | d. ADDRESS <i>(If appropriate)</i> 250 Paul Jones Street Bldg 2, Suite 100 Great Lakes, IL 60088 | |

9. *(To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)*

| | |
|-----------------------------------|----------------|
| a. PLACE Not applicable | b. DATE |
|-----------------------------------|----------------|

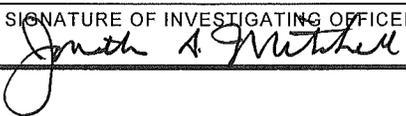
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

c. SIGNATURE OF ACCUSED
 Not applicable. Accused was represented by civilian and military counsel.

| | YES | NO |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| 10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i> | | |
| a. THE CHARGE(S) UNDER INVESTIGATION | X | |
| b. THE IDENTITY OF THE ACCUSER | X | |
| c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31 | X | |
| d. THE PURPOSE OF THE INVESTIGATION | X | |
| e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE | X | |
| f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECT TO PRESENT | X | |
| g. THE RIGHT TO CROSS-EXAMINE WITNESSES | X | |
| h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED | X | |
| i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION | X | |
| j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING | X | |
| 11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i> | X | |

b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL
 Not applicable

NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c".) Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

| 12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer) | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|------------------------------------------------------------|-----------------------------------------------------------|----|
| NAME (Last, First, MI) | GRADE (If any) | ORGANIZATION/ADDRESS (Whichever is appropriate) | YES | NO |
| Burke, Edward J. | Civ | Special Agent, Naval Criminal Investigative Service (NCIS) | X | |
| Bottoms, James | Civ | Special Agent, Naval Criminal Investigative Service (NCIS) | X | |
| Dull, Teri | E-3 (ENFN) | USS GEORGE H W BUSH (CVN 77) | X | |
| Gates, Patricia | E-3 (MASN) | Naval Station Kings Bay, Security Detachment | X | |
| Wanner, Wade C. | E-5 (AM2) | Recruit Training Command | X | |
| Holz, Beth A. | E-9 (ETCM) | Recruit Training Command | X | |
| b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED. | | | X | |
| 13A. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH. | | | | |
| DESCRIPTION OF ITEM | LOCATION OF ORIGINAL (If not attached) | | | |
| I received the following items into evidence as exhibits: IO Ex-1: Appointment of Article 32 I/O, Government and Defense Counsel ICO Senior Chief Boatswain's Mate Craig R. Smith, USN, xxx-xx-2514 | Region Legal Service Office | | X | |
| IO Ex-2: DD Form 458 (Charge Sheet) dated 28 March 2011 ICO BMCS (SW/AW) Craig R. Smith, USN, xxx-xx-2514 | Region Legal Service Office | | X | |
| IO Ex-3- NCIS Investigative Report | NCIS Great Lakes | | X | |
| b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED | | | X | |
| 14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).) | | | | X |
| 15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.) | | | X | |
| 16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL | | | | X |
| 17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM | | | | X |
| 18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED | | | X | |
| 19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).) | | | X | |
| 20. I RECOMMEND: | | | | |
| a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL | | | | |
| b. <input type="checkbox"/> OTHER (Specify in Item 21 below) | | | | |
| 21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.) | | | | |
| See attached continuation block 21 | | | | |
| 22a. TYPED NAME OF INVESTIGATING OFFICER Jonathan A. Mitchell | | b. GRADE O-4 | c. ORGANIZATION Naval Reserve Legal Service Office 209 | |
| d. SIGNATURE OF INVESTIGATING OFFICER  | | | e. DATE 08 MAY 2011 | |

CONTINUATION SHEET 1, DD FORM 457, PERTAINING TO

Item 12a, continued:

| <u>NAME (Last, First, MI)</u> | <u>GRADE (If any)</u> | <u>ORGANIZATION/ADDRESS (Whichever is appropriate)</u> | <u>YES</u> | <u>NO</u> |
|-------------------------------|-----------------------|--------------------------------------------------------|------------|-----------|
| Spears, Duane A. | E-8 (CSCS) | Recruit Training Command | X | |
| Watson, Courtney | E-3 (GSEFN) | ATT School Naval Station Great Lakes | X | |
| Gill, Megan H. | O-3 (LT) | Naval Station Great Lakes | X | |

Item 13a, continued:

| <u>DESCRIPTION OF ITEM</u> | <u>LOCATION OF ORIGINAL (If not attached)</u> | <u>YES</u> | <u>NO</u> |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|------------|-----------|
| IO Ex-5: Voluntary statements of Teri Jeanne Dull, dated 10/18/10, 10/19/10. | NCIS, Great Lakes | X | |
| IO Ex-6- Voluntary statement of Patricia Rae Gates. | NCIS, Great Lakes | X | |
| IO Ex-7: Military Suspect's Waiver of Rights and voluntary statement of BMCS(SW/AW) Craig Smith. | NCIS, Great Lakes | X | |
| IO Ex-12: U.S. Naval Criminal Investigative Service Report of Investigation (Interim) by SA James M. Bottoms. | NCIS, Great Lakes | X | |
| IO Ex-13: U.S. Naval Criminal Investigative Service Results of Re-Interrogation of S/Smith by SA Edward J. Burke. | NCIS, Great Lakes | X | |
| IO Ex-14: Sworn statement of FN Teri Jeanne Dull, USN dated 22 Feb 2011. | NCIS, Great Lakes | X | |
| IO Ex-15: Sworn Statement of MASN Patricia Gates, USN, dated 23 Feb 2011. | NCIS, Great Lakes | X | |
| IO Ex-16: Sworn statement of AM2 Wade C. Wanner, USN, dated 02 Mar 2011. | NCIS, Great Lakes | X | |
| IO Ex-34: Sworn statement of MASN Patricia Gates, USN, dated 07 Apr 2011. | NCIS, Great Lakes | X | |
| IO Ex-35: photocopy of the | NCIS, Great Lakes | X | |

cover page to MASN Patricia Gates' Training Guide and also pages 318-19 of the guide with handwritten notes.

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|----------------------------------------------------------------------------------------------|------------------------|---|
| IO Ex-38: Sworn statement of GSEFN Courtney Watson, USN, dated 12 Apr 2011. | NCIS, Great Lakes | X |
| IO Ex-39: SECNAVINST 5300.26D DON Policy on Sexual Harassment. | Attached | X |
| IO Ex-40: NSTCINST 5370.1 NSTC Policy regarding Fraternalization | Attached | X |
| IO Ex-41: Map of NSA Great Lakes with hand marked "X" on Illinois Street. | Attached | X |
| IO Def Ex-1: USS GEORGE H W BUSH Page 13 record of Non-Judicial Punishment ICO Terri J. Dull | NCIS, Great Lakes | |
| IO Def Ex-2: Various military Certificates and commendations Awarded to BMCS Craig R. Smith | BMCS Craig Smith's SRB | X |

Item 16, continued:

ENFN Dull testified that her command is scheduled for a seven month deployment. She was instructed by this Investigating Officer to provide Government Counsel with contact information so that she could be reached in the event the matter proceeds to trial.

GSEFN Watson testified that she plans to separate from the Navy within the next month and move to Florida. She was instructed by this Investigating Officer to provide the Government Counsel with contact information including an updated address so that she could be reached in the event the matter proceeds to trial.

LT Gill testified that she is scheduled for a permanent change of station (PCS) on or about August 2011. She was instructed by this investigating Officer to provide Government Counsel with contact information including an updated command and address so that she could be reached in the even the matter proceeds to trial.

Item 17, continued:

While all the charges are generally in the correct form, the Charge Sheet charges Senior Chief Craig R. Smith with five charges and numerous specifications. The charge sheet spells ENFN Dull's first name as "Terri" however, it appears based on her sworn statements that the correct spelling is Teri, having only one "r" in her first name.

Also, on page 1, Charge II: Violation of UCMJ, Article 92- Failure to Obey order or regulation, in Specifications 3-5 identifies the date as "on or about 15 October". The testimony during the Article 32 revealed that the Order given by Master Chief Holz directly to Senior Chief Smith to avoid all contact with recruits was given no earlier than 19 October, the day Master Chief Holz gave him the Order and after ENFN Dull made an official complaint with her chain of command, vice October 15, 2010 as listed in the charge sheet in Specification 3 and 4.

Item 21, continued:

I received the above listed items in block 13a into evidence. I reviewed the remaining exhibits and excluded them from my consideration pursuant to RCM 405 based on the objection by Defense Counsel Faraj regarding statements of individuals who were not called as witnesses and not subject to cross-examination. Defense Counsel stated his objection at the beginning of the hearing and renewed his objection at the close of evidence. Pursuant to the agreement of the attorneys, I reserved ruling on the objections during the hearing. Defense Counsel did not call any witnesses to testify. ENFN Dull testified and was recalled to the stand later during the hearing by the Investigative Officer. All witnesses listed above were called upon to testify by Government Counsel.

Based on the objections stated by defense counsel, I did not consider any exhibit or statement in reaching my conclusions as stated in this report unless the individual who made the statement testified and was subject to cross-examination. The exhibits I considered for purposes of my Investigation and report are listed above in Item 13a.

The Defense Counsel submitted documentary evidence related to other sexual acts of ENFN Teri Dull. See Def Ex. 2. The Government Attorneys objected to my consideration of that evidence because RCM 405 prohibits it pursuant to Mil. R. Evid. 412. After review of the statements and RCM 405 and Mil R. Evid. 412, and inquiry with the defense as to the reason desired for ENFN Dull to be subject to cross-examination as to those statements, I excluded any testimony related to other sexual conduct of ENFN Dull. I allowed the defense to inquire regarding ENFN Dull receiving non-judicial punishment aboard the USS GEORGE H W BUSH (CVN 77).

All exhibits submitted during the investigation, even those that I have not considered, have been attached for your review as the Convening Authority. The exhibits are marked in order as IO1 through IO41 and Def Ex1 and Def Ex2. The defense exhibits are group exhibits IO Def Ex-1 and IO Def Ex-2.

The military justice system has subject matter jurisdiction over the offenses alleged to have been committed by the accused. See Articles 92 and 128 of the Uniform Code of Military Justice (hereafter "UCMJ"); see also Manual for Courts-Martial. Since the accused was serving on active duty at the time he allegedly committed the offenses and is still so serving, the military justice system has personal jurisdiction over him. See *Solorio v. United States*, 483 U.S. 435 (1987).

ENFN Teri J. Dull is the principal witness in this matter for all charges and specifications involving sexual misconduct. Master Chief Beth Holz, LT Megan Gill, GSEFN Courtney Watson are all principal witnesses related to Senior Chief Smith's failure to follow the direct Order of Master Chief Holz to avoid contact with all recruits on or about October 19, 2010. FN Watson and LT Gill are eye witnesses to the alleged violations of the order.

ENFN Dull testified that approximately two weeks into boot camp, Senior Chief Smith, one of the Recruit Division Commanders (hereafter RDC), began making comments to her that she interpreted as being sexual in nature. She testified that the comments continued during boot camp and escalated to physical contact by Senior Chief Smith. She interpreted Senior Chief Smith's comments and actions to mean that he desired to engage in a romantic relationship with ENFN Dull. According to ENFN Dull, the comments started with potentially benign comments such as "you look good . . ." but that ENFN Dull interpreted those comments based on his tone as being flirtatious.

ENFN Dull testified that Senior Chief Smith started physically touching her by touching her on her bottom during head inspections. ENFN Dull was the "Head PO" which was a position of leadership and responsibility. She was responsible for ensuring the cleanliness of the head. She testified that physical and sexual contact started soon after he began making the verbal comments. She testified that Senior Chief Smith would touch her bottom and eventually he attempted to kiss her but she claimed she did allow him to touch her bottom and she did not allow him to

kiss her. She testified that only on one occasion did he actually kiss her and the other times he attempted to kiss her. She testified that his contact with her escalated to the point at which Senior Chief Smith was attempting to fondle her breasts, bottom, and vagina over her clothes and on one occasion he reached inside of her shirt to touch her breast. She testified that on one occasion in the female head he revealed his penis to her after pulling his PT shorts down. She testified that he exposed his naked penis to her and he asked her to touch his penis. She testified that that he made efforts to force her to touch it by grabbing her wrists. She testified that did not touch his penis and that she turned away but could see the penis out of the corner of her eye. She testified that she did not reciprocate by agreeing or consenting to enter a sexual relationship with him.

She testified that she did not make a formal report to her chain of command about the comments or Senior Chief's efforts to enter a romantic or sexual relationship with her because she was scared that Senior Chief Smith would ruin her career and she did not want to be labeled a "tattletale" by the other recruits. She testified that Senior Chief Smith was respected and popular as a RDC.

ENFN Dull testified that on one occasion Senior Chief Smith "grabbed her butt" in plain view of others and she said to him "you're gonna get caught" and he responded "do you think I'd put myself in that position."

According to ENFN Dull, Senior Chief Smith's conduct continued during boot camp from the second week of boot camp until on or about 18 October 2010, when two events happened about the same time that led her to make a formal complaint. The first of the two events started when Senior Chief Smith informed ENFN Dull that they were going to have a head inspection. Based on the testimony of several witnesses, the RDC would inspect the head with the "Head PO" and any infraction would result in a "hit." The term "hit" was defined by Recruit Training Command as an infraction in performance as opposed to the recruit being physically being struck or punched by the RDC. According to ENFN Dull, Senior Chief Smith gave ENFN Dull two options: Option 1 was to kiss him for every "hit" he found in the ladies' head and Option 2 was for him to physically hit her on the arm for every infraction. ENFN Dull chose to be physically hit in the arm and according to her, Senior Chief Smith did in fact punch her in the arm for each infraction. She testified that her arm had bruises on it from being struck several times by Senior Chief Smith and that attempts to take photographs of the bruises were unsuccessful because the bruises were too yellow in color to appear on film.

The second event that led her to make a formal complaint happened soon after being struck in the arm several times by Senior Chief Smith. The second event also occurred during a separate head inspection. Because of the escalating level of sexual advances, when ENFN Dull was informed that she had another head inspection she informed MASN Gates and MASN Gates then stood-guard by the door of the head to listen and potentially watch for any inappropriate conduct from Senior Chief Smith. It was during this head inspection that ENFN Dull alleged that Senior Chief Smith grabbed her around the neck and then attempted to kiss her on the mouth. ENFN Dull clarified that she was not choked in the literal sense, but that Senior Chief Smith's hand was around her throat as he directed her and while he spoke to her, and also while he tried to kiss her.

MASN Gates testified that she did not observe any of the allegations, but she claimed that while she was standing by the entrance she heard talking between Senior Chief Smith and ENFN Dull and then several moments of silence. Immediately after the silence, MASN Gates said that ENFN Dull exited the head. Later that same evening and during a training session, ENFN Dull hand-wrote on MASN Gates's training guide that "when he checked the head he grabbed me by the throat." See IO-Ex.35.

Prior to reporting the conduct to her chain of command, ENFN Dull testified that she told her close friend MASN Patricia Gates about Senior Chief Smith's comments and attempts to engage her in a sexual relationship. Despite being married, she did not inform her husband until after making the report to her chain of command. She did not testify that she informed her parents of the sexual advances from Senior Chief

Smith. ENFN Dull and MASN Gates both testified that MASN Gates had issued an ultimatum to ENFN Dull that if ENFN Dull did not report the conduct that MASN Gates planned to make a formal complaint regarding Senior Chief Smith's actions. Whether MASN Gates's demand that ENFN Dull take action was the ultimate triggering event for ENFN Dull to make a formal complaint was unclear from the testimony.

When ENFN Dull first reported the allegations, one of the individuals who received the report was Senior Chief Duane A. Spears. Senior Chief Spears testified as to what ENFN Dull reported to him. What he recalled from ENFN Dull's initial report was consistent with the testimony that ENFN Dull provided at the Article 32 hearing. ENFN Dull did not provide all the details, but only general details for the most egregious acts.

AM2 Wade C. Wanner, USN, testified about RDC training and the importance instilled during the training of avoiding inappropriate relationships with recruits. AM2 Wanner also confirmed that ENFN Dull reported Senior Chief Smith's inappropriate comments and actions. GSEFN Watson confirmed seeing a bruise on ENFN Dull's bottom and confirmed that ENFN Dull said that the bruise came from Senior Chief Smith's hand.

ENFN Dull had trouble remembering the exact order of events and the timing of events when compared to other events. When asked during cross-examination when one allegation occurred compared to other allegations, she could not remember. She also testified that could not remember the "little stuff like kissing" or words to that effect. While her memory may have been exhausted due to the more than four hours she testified during the Article 32, this Investigating Officer's opinion is that her interaction with Senior Chief Smith related to his attempts to engage in a romantic relationship happened with enough frequency that it was difficult for her to distinguish the order.

ENFN Dull clearly remembered several criminal events: 1) Senior Chief Smith exposing his penis to her; 2) Senior Chief hitting or slapping her bottom; 3) Senior Chief punching ENFN Dull in the arm as a result of her refusal to be kissed during the head inspection; and 4) Senior Chief Smith grabbing her around the throat and attempting to convince her to kiss him.

There are some troubling aspects of ENFN Dull's testimony in my opinion including her testimony that she did not say "no" to him at any time. Her written statement indicates that her response was always "I don't know" when he would make sexual advances. Her justification was that she would always answer him no matter what with "I don't know" because this was her reaction when she was scared and could not get away. See IO-Ex. 14. Also troubling were her comments that she couldn't keep track of the timeline for the "little stuff" and her comment to Senior Chief that he was going to get himself in trouble because this statement could be interpreted as her desire to protect him. These comments lead this Investigating Officer to conclude that Senior Chief Smith committed the conduct at the beginning under the incorrect belief that ENFN Dull was a willing participant. It is my conclusion that her failure to respond negatively to his initial verbal comments and also her testimony that she did not provide him with a firm "no" or "stop" was ultimately and wrongfully interpreted by Senior Chief Smith as consent. Any reliance that she was consenting to a relationship should have ended for Senior Chief Smith when she refused to engage in physical contact with him. Also, her desire to be punched instead of kissed should have created a clear impression for Senior Chief Smith that she did not desire a romantic relationship with him.

Despite my concerns listed above, it is also my conclusion based on the evidence and testimony that Senior Chief Smith, as a RDC, was in violation of Navy policy and even if mistaken about her consent, that he committed criminal conduct by violating the SECNAV Instruction 5300.26D by creating a hostile work environment and also NSTC Instruction 5370.1 by trying to engage in a romantic relationship with one of his students and a E-1 while his own pay grade was E-8. Also it is my opinion that he used his position of authority as a RDC to get ENFN Dull alone and that he used physical force against ENFN Dull. There was no evidence or testimony to suggest

that ENFN Dull falsely created the allegations or that she had any motive to damage Senior Chief Smith's reputation or career. There were no witnesses or evidence to diminish ENFN Dull's character for truthfulness. Although evidence was presented and accepted that she recently went to NJP for adultery, this Investigating Officer does not find that her own misconduct accounts for or diminishes the conduct of Senior Chief Smith or that it tends to discredit her allegations involving his conduct.

Although she could not remember the timing of events, and her memory was not completely clear when defense counsel asked her under cross examination about specific events and when they occurred, when this Investigating Officer asked her directly if she remembered each event in the charge sheet and whether Senior Chief Smith committed the offenses in Charge I, Charge II, Charge III, Charge IV, and Charge V, she responded affirmatively that each event did in fact occur with a few exceptions. As to Specification 9 of Charge IV, ENFN Dull denied that Senior Chief Smith grabbed her face with his hand. Also, Charge V, specification 1, alleges that Senior Chief Smith told her that he was "going to make the rest of your time at bootcamp hell if you don't give me what I want" or words to that effect. ENFN Dull denied that Senior Chief Smith made such a threat.

As noted in closing arguments by defense counsel, much of the evidence in this matter is hearsay and may not be admissible in a Court-Martial. The primary witness for the allegations of sexual misconduct is ENFN Dull. MASN Gates is able to provide corroboration; however, she was not an eye witness to any of the criminal conduct involving ENFN Dull. Her corroboration does support the allegations made by ENFN Dull.

Although ENFN Dull testified that each of the events in the charge sheet occurred, she could not remember the circumstances surrounding each event or the timing of it. It is the recommendation of this Investigating Officer that the charges focus on the four main events that ENFN Dull's fading memory recalled most clearly, namely: 1) Senior Chief Smith exposing his penis to ENFN Dull in the female head; 2) Senior Chief Smith striking her on the bottom which resulted in her response to him that he would get caught; 3) the physical punching by Senior Chief Smith on ENFN Dull's arm for her "hits" in the female head; and 4) grabbing ENFN Dull around the throat and attempting to kiss her on the mouth. Nevertheless, the standard for this Investigating Officer is whether reasonable grounds exist for the charges to be referred to a Court-Martial. See RCM 405. Based on the evidence and testimony presented and considered at the Article 32 hearing, it is this Investigating Officer's opinion that reasonable grounds exist to believe that the accused committed the offenses alleged for every charge as listed on the Charge Sheet dated 28 March 2011 involving ENFN Dull excluding Charge IV, Specification 9 and Charge V, Specification 1.

Despite his outstanding career, awards, and commendations submitted in mitigation and extenuation, it is my recommendation that because of the severity of the conduct as detailed above and because of his use of the position of authority that Senior Chief Smith possessed as a Recruit Division Commander over recruits, that this matter is appropriate for referral to General Court Martial.

The charge sheet also includes charges related to Master Chief Holz's direct order to Senior Chief Smith to avoid contact with all recruits. Eye-witness testimony was presented related to this direct order and his violations of the direct order.

Master Chief Holz testified that she clearly and directly gave him the order on more than one occasion and beginning on 19 October 2011. There was no doubt in her mind that Senior Chief Smith understood the order. During her testimony, Master Chief Holz quoted Senior Chief Smith's response as "Aye, Master Chief" when she ordered him not to have any contact with recruits. Master Chief Holz also testified that the recruit schedules are structured so closely that the likelihood that Senior Chief Smith coincidentally happened to be at the Naval Exchange at a time when the recruits also at the Naval Exchange was unlikely. She testified that there was no reason for him to be in the compartment to retrieve a rain jacket.

GSEFN Watson and LT Gill both testified as eye-witnesses to Senior Chief having contact with recruits on dates after 19 October 2010 under circumstances unusual enough to allow both individuals to clearly remember the event and to recall it. Even though LT Gill could not remember the names of the two recruits that Senior Chief approached on graduation day, she was sure that Senior Chief had contact with two recruits. During her testimony, LT Gill stated that she thought one of the two might be ENFN Dull who spoke with Senior Chief Smith on recruit graduation day. ENFN Dull was recalled as a witness and denied having any contact with Senior Chief Smith on her graduation day.

Regardless of which recruits he made direct contact with, the evidence was strong that he made direct contact with at least two recruits on graduation day of 29 Oct 2010 and after being ordered to avoid all contact with recruits. Also, GSEFN Watson testified that Senior Chief Smith approached her after 19 Oct 2010, which would also have been a violation of Master Chief Holz's order.

Government counsel during closing argument suggested that testimony supported an additional charge against Senior Chief Smith for his direct contact with GSEFN Watson. There are reasonable grounds to believe that Senior Chief Smith committed an additional violation of the direct order from Master Chief Holz's direct order to avoid contact with recruits when he initiated contact with GSEFN Watson.

The communication initiated by Senior Chief Smith with the recruits under other circumstances may have been less significant and the testimony regarding the words he communicated to the recruits appear to be words of encouragement; however, the repeated violation of the direct order under the circumstances of this case tend to suggest a lack of respect for good order and discipline. I find reasonable grounds exist that the accused committed the offenses listed in Charge II and all five specifications, with corrections to the dates as noted above. I recommend the addition of specification 6 regarding the unlawful contact Senior Chief Smith made with GSEFN Watson after being ordered by Master Chief Holz to avoid all contact with recruits.

I recommend referral of this entire matter to trial by GENERAL COURT MARTIAL.

Very respectfully submitted


Jonathan A. Mitchell
LCDR, JAGC, USN

cc.
Government Counsel, LT Scheff
Government Counsel, LTJG Redmond
Detailed Defense Counsel, LT Gough
Civilian Defense Counsel, Mr. Faraj