

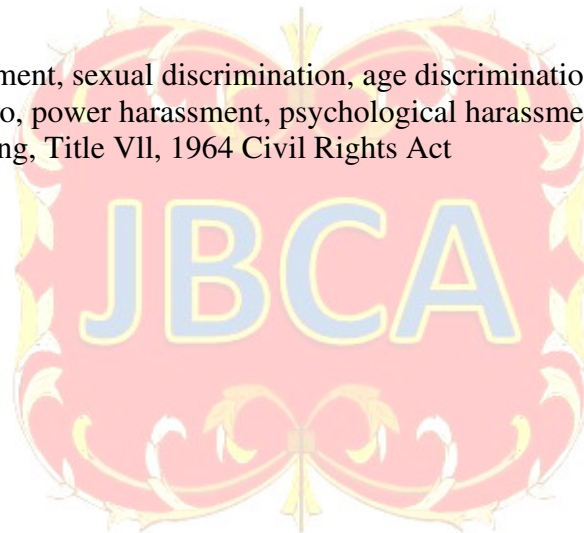
## Mike Mitchell faces a hostile work environment?

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### Abstract:

This descriptive based critical incident reflects a real-life situation as recounted to one of the authors by the principal involved. Mike Mitchell, a HM2, Navy corpsman attached to the US Marines was near completion of his eight-year reserve commitment when he ran afoul of Senior Master Chief Elaine J. Barnett and became the unwilling target of the Master Chief's harassment and abuse which may have bordered on the creation of a hostile work environment. Harassment and discrimination in the workplace, including sexual harassment and the creation of a hostile work environment, are very real problems faced not only by the private sector, but also by our nation's military institutions including service men and women found in all branches of the armed forces.

Keywords: sexual harassment, sexual discrimination, age discrimination, hostile work environment, quid pro quo, power harassment, psychological harassment, personal harassment, verbal harassment, bullying, Title VII, 1964 Civil Rights Act



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**Introduction:**

Mike Mitchell was a 34-year-old licensed paramedic by training and profession who had enlisted in the US Navy Reserves and received the rank of HM 3, Petty Officer 3<sup>rd</sup> Class. His enlistment was an eight-year commitment and his contract required that he attend drill one weekend per month and two weeks of drill a year. Mike was assigned to the US Marine Corps 4th Division, 25<sup>th</sup> Regiment, Headquarters Company. He found the experience rewarding and invigorating; indeed, he enjoyed giving back to his country as a naval reservist. The first several years were mostly routine and like the marine unit he was attached to, Mike participated in field exercises, 10- and 20-mile marches, learned how to handle firearms and became a marksman while consistently improving his emergency medical skills. Mike participated in all the marine reserve field training exercises and even though he was a naval reservist, he proved as tough a “marine” as the marine reservists several years his junior.

All that was routine changed after September 11, 2001 terrorist attacks. In response, United States military forces engaged in the war on terrorism resulting in the need to deploy Reserve units along with the full-time volunteer military forces. Indeed, Mike would spend nearly 18 months deployed on separate occasions to Camp Lejeune, North Carolina, the Philippines and Okinawa, Japan. Subsequent to a second deployment in the war against terrorism, Mike made a decision to transfer from the “mud Marines” (Marine Infantry) to the Marine Air Reserve unit, the 4<sup>th</sup> Marine Air Wing, 49<sup>th</sup> Marine Air Group located at Stewart Field in Newburgh, New York, a three-hour drive from his home, where he planned to finish his reserve obligation.

**The incident:**

Without warning, Mike found himself as the reservist most senior in rank when, with less than a year remaining in the reserves, the full-time corpsman at Stewart Field, HM 1, Petty Officer 1<sup>st</sup> class, Dave Rogers, retired from the Navy. Mike’s reserve drill obligation was one weekend per month. He now became the lead corpsman responsible for scheduling physicals, administering vaccine shots, managing the medical supply inventory, reordering needed supplies and filing the myriad of paperwork and reports due to headquarters in Warminster, Pennsylvania. Mike’s workload had increased over five-fold, and, as a part-time reservist, he struggled to fulfill his duties. He held a full-time position as a paramedic outside the Navy and his new reserve responsibilities were intruding on his full-time job, his personal and family life. Getting the necessary paperwork and reports to the Master Chief in Pennsylvania on time became daunting and a major challenge to the reservist.

On several occasions, Mike filed his paperwork and reports late, but the Master Chief refused to accept his explanations. Feeling pressured, Mike insisted that the Master Chief find a full-time corpsman to replace petty officer Rogers. To balance his new responsibilities, he also requested temporary orders from the Master Chief to take an additional 30 days of full-time administrative training at the Warminster headquarters; both of his requests were refused by the Master Chief. He was instructed to carry on and to do his best to fill in, but he struggled to meet deadlines. His belated efforts to file the required paperwork and reports found little sympathy

from the Master Chief and soon the two became entangled in a series of e-mail and telephone recriminations and accusations regarding his work ethic and failure to submit paperwork and reports in a timely manner. Their relationship became increasingly strained and more hostile.

Suddenly, unexpectedly, an order from headquarters directed all members of the Stewart Field reserve medical unit to report for future weekend drills and additional training to the Willow Grove Naval Air Station in Warminster, Pennsylvania. The change in drill location meant that each reservist would have to travel an additional three and one half hours to the new drill location from Newburgh, New York. All corpsmen, medical technicians and even the reserve commanding medical officer, Commander Jack Powers MD, were ordered to report to Warminster for evaluation and additional training. For Mike, this change in drill locales meant a commute of over six hours each way from his home in Massachusetts.

After two monthly meetings at the new drill location, the entire medical unit was returned to Stewart Field except for Mike who was personally ordered by the Master Chief to continue his drilling in Warminster. He was stunned by the Master Chief's decision, and wondered why he had been singled out. Mike's job performance, evaluations and skills over the years of his service were all beyond reproach; he had received high evaluations from his commanding officers, and a promotion to HM 2<sup>nd</sup> Class. Now his relationship with the Master Chief had unraveled and remained strained and hostile; the Master Chief apparently felt a need to set some type of example.

Mike's work performance, despite the constant overbearing scrutiny, and interference of the Master Chief, remained strong; he recommitted himself to excel in his duties and responsibilities. However, the frequent intimidation, and questioning of his skill sets, remained unsettling and became increasingly unbearable for Mike. It appeared to him that there would be nothing he could do that would be acceptable in the eyes of the Master Chief. Unexpectedly, the Master Chief suggested to Mike that he consider a transfer to the inactive reserve. Mike would give up the remaining months of his drill pay, but would no longer have any drill responsibility, nor have to report to Warminster and more importantly would be free of constant intimidation heaped upon him by the Master Chief. With five months remaining on his contract, Mike quickly submitted his request only to have it denied by the Master Chief. It was the last straw. Mike felt that this latest ploy, submit the transfer request to the inactive reserve as suggested by the Master Chief and then be denied, was just another example of her intolerance and hostility toward him. Now age 41 and having successfully completed over seven years as a reservist, Mike concluded that he could no longer tolerate the discrimination, intolerance and hostility directed toward him by the Master Chief. Mike had enough of Senior Master Chief Petty Officer Barnett; something needed to be done and done now.

### **Conclusion:**

Mike reached for his cell phone; he was no longer willing to accept what he perceived as antagonistic treatment, ridicule and the hostility created by the Master Chief. Friends and family members had counseled him to take action against the Master Chief. His uncle, who taught several college management courses, suggested he "consider filing a claim of harassment based upon the Master Chief's creation of a hostile work environment". His uncle explained that a US

Supreme Court decision, *Harris v. Forklift Systems, Inc.* (1993), found that an employee who suffered persistent harassment, regardless of whether that harassment interfered with job performance or created psychological damage, had a cause for action. The Master Chief's conduct could be construed as severe enough to have created an abusive work environment, a violation of Title VII (*Harris v. Forklift Systems, Inc.* 510 U.S. 17 (1993)).

Indeed, Mike perceived that his work environment had become hostile, abusive and intimidating and that he was harassed by the Master Chief. Yet making an official harassment complaint against Master Chief might seem an overreaction from the veteran reservist. On the other hand, if he did file an official complaint with the Command Equal Opportunity Office against the Master Chief's harassing actions taken against him, she would be investigated and her career might be jeopardized. Perhaps she would now have to think twice before singling out another enlisted subordinate or reservist for such continued abuse and harassment in the future. With some hesitation and much trepidation, Mike telephoned his commanding officer, Commander Powers, to inform him that he was filing a harassment complaint against the Senior Master Chief.

#### **Case overview:**

Mike Edwards, a HM 2 Navy corpsman, had an honorable career as a U.S. Naval Reservist attached to the U.S. Marines. Having been deployed twice in the war against terrorism, Mike was looking forward to the completion of his eight-year Reserve obligation when he ran afoul of Senior Master Chief Elaine J. Barnett (hereafter referred to as Master Chief). Following the unanticipated retirement of the full-time corpsman at Stewart Airfield, Mike, as the next highest-ranking corpsman, became the reluctant administrator for the medical unit, but found the additional work, responsibilities and deadlines overwhelming. Mike requested temporary orders to undertake additional administrative training, but his request was denied by the Master Chief. His subsequent request that the Master Chief assign a fulltime corpsman met a similar fate. Mike's inability to balance his increased responsibilities as a reservist with his full-time employment as a paramedic, husband and father created tension and strained relations between him and the Master Chief.

The strained relations were exacerbated when Mike's medical unit was ordered to report for drill to the Willow Grove Naval Air Station in Warminster, Pennsylvania some three- and one-half hours away from Stewart. After two months of evaluation and drill, the unit was returned to Stewart except for Mike who was ordered by the Master Chief to continue his monthly drill in Warminster. With less than eight months remaining on his reservist contract, Mike was forced to commute for drill some six- and one-half hours each way from his home. When the Master Chief suggested that he consider transferring to the inactive Reserve, Mike quickly submitted his request only to have it denied by the Master Chief. No longer willing to be the perceived target of harassment and unwilling to further accept the abuse of the hostile work environment created by the Master Chief, Mike considered filing a complaint of discrimination based upon his perception of harassment and creation of a hostile work environment.

This critical incident is a descriptive case and is intended for use in Introduction to Business, Fundamentals of Management, Organizational Management, Small Business Management, Human Resources Management, and Business Law undergraduate courses.

**Research method:**

This critical incident is a descriptive case based upon interviews with the principal involved and represents his recollections of what happened to him. The Marine units and locations are real, but the names of the principal protagonists have been disguised.

**Learning outcomes:**

After completing this assignment, the student should be able to:

1. Identify and categorize the various forms of discrimination and harassment found in the workplace
2. Be able to distinguish the protocols and options to address workplace discrimination and harassment
3. Evaluate and formulate a course of action for organizations to correct and minimize such activity in the workplace

**Discussion questions:**

1. From your studies and reading of this critical incident explain what is meant by harassment in the workplace; identify, compare and contrast the various forms of workplace harassment and discrimination that are prevalent in the workplace. Why has the issue of harassment become so challenging for the military, private and governmental sectors? (LO 1)
2. Assume that you are Mike Mitchell, re-examine the situation you faced with the Master Chief and select a course of action you should take to resolve the issues involved and the perceived harassment and hostile work environment. (LO 2)
3. You have been charged by the CEO of your organization to formulate and recommend the principal features that should be included in your organization's workplace discrimination prevention plan and policy. What features would you include in your proposed plan and policy? (LO 3)

**Responses to discussion questions:**

1. From your studies and reading of this critical incident, explain what is meant by harassment in the workplace; identify, compare and contrast the various forms of workplace harassment and discrimination that are prevalent in the workplace. Why has the issue of harassment become so challenging for the military, private and governmental sectors? (LO 1)

A student's high-quality response should include:

- The definition of harassment
- Details about the various forms of workplace harassment and discrimination, such as psychological harassment, power harassment, verbal harassment, age harassment, sexual harassment (quid pro quo, hostile work environment)
- Discussion of challenges, such as variations in perception and interpretation, difficulty proving harassment, guarding against retaliation.

Students will have to make the determination whether any of the criteria apply to Mike Mitchell's claim of harassment.

Workplace harassment and discrimination are both highly complex issues that frequently take on a variety of interpretations and forms. The most common types include sexual, racial, age and gender-based discrimination. Yet several other less visible, less obvious forms of harassment and discrimination are also all too prevalent which result in disparate treatment and have a negative impact on employees and workers. Personal, psychological, power, physical, and verbal harassment and discrimination all have a disparate impact upon employees. Moreover, many of these forms of harassment often prove daunting to recognize even for experienced human resource professionals. Harassment can be described as a:

*Form of employment that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 and the Americans with Disabilities Act of 1990. Harassment is unwelcome conduct based upon race, color, religion, sex, national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where...the conduct is so severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive.* (Equal Employment Opportunity Commission, n.d.c, para.1-2)

In the end, workplace harassment is a form of discrimination as the majority of victims involved falls under one or more of the Title VII protected classes.

#### **Forms of workplace harassment and discrimination:**

- **Personal Harassment** occurs when the perpetrator of the action targets an individual employee or worker because of whom he or she is as a person. Such harassment and discrimination are not typically based upon one of the protected classes and may not actually be illegal under Federal or State law. Nonetheless, such actions may cause the employee to become discouraged sufficiently enough to become less productive in the workplace. Typical examples of personal harassment include offense jokes at the expense of the worker, critical remarks and intimidation.
- **Psychological Harassment** targets the psychological well-being of an individual worker; the victim often feels belittled on a professional and personal level. Such harassment seeks to discredit one's work efforts as unsatisfactory, or by stressing malicious rumors about the incompetence that are untrue, but result in the infliction of psychological stress and increased anxiety.
- **Power Harassment** is frequently based upon the level of power exercised in the workplace which creates unreasonable demands and deadlines. Power harassment is based upon the disparity between the harasser and the employee harassed in which the former exercises power by bullying and intimidating the latter that is lower in the organizational hierarchy. (See Pedagogical materials for a more detailed question and response on Power Harassment)
- **Physical Harassment** involves actual workplace violence and includes acts of violence against another worker or employee, such as kicking, punching, shoving, battery and threats to inflict physical or property damage.
- **Verbal Harassment** may take the form of bullying and frequently includes comments that deemed abusive, threatening and intimidating. Bullying behavior is

- manipulative and controlling; it places excessive demands on the employee or worker that are often impossible to meet and intrudes on the worker's personal life.
- **Age Harassment** occurs when the employee, worker, is unfairly treated because of his or her age. The Age Discrimination in Employment Act of 1967 forbids age discrimination against workers who are 40 years old or older. Age harassment becomes illegal when it is severe enough to create an offensive work environment or adverse employment decision. Workers who are 40 or older are among the protected class under Title VII of the Civil Rights Act of 1964.  
It is unlawful to make derogatory remarks, tease or unfairly criticize a person because of age. Leaving older workers out of organizational activities or excluding them from meetings or pushing an older employee into early retirement may also violate the law. Harassers in this instance may be supervisors, co-workers, clients or even customers. Age harassment can occur even when the harasser and victim are both over the age of 40 (Equal Employment Opportunity Commission, n.d.a).
  - **Sexual Harassment** has been a principal issue of concern in United States' society for over 50 years and continues to be both an ethical and legal issue today. Although sexual harassment in the workplace typically tends to involve female subordinates and male managers and supervisors, both women and men are protected from sexual harassment in the workplace under Title VII of the 1964 Civil Rights Act.  
Sexual harassment occurs in a wide range of organizations, including the military and has negative ramifications for victim's job satisfaction, stress levels and often results in increased anxiety, insomnia, and eating disorders. According to Fred Lunenburg (2010), victims of sexual harassment in the workplace also frequently exhibit symptoms of lower productivity, disinterest in work, absenteeism and negative attitudes toward co-workers, managers and supervisors.  
The issue of sexual harassment has evidenced a significant number of complaints and claims; studies have found that one in four women have experienced some form of sexual harassment, while one in 10 men have stated that they have been victims of sexual harassment in the workplace (Gaille, 2017).  
Indeed, a Pentagon survey of active military further confirmed the problems of sexual harassment in the workplace. The survey noted that over one third of the female respondents claimed to have experienced some form of sexual harassment at the hands of superiors and peers, while six percent of the male respondents stated that they had been the victims of sexual harassment (Ferdinando, 2018).  
The harassers are often managers and supervisors, but can also include co-workers, peers, customers, and even clients. Harassment frequently occurs between male and females, but can also involve same sex individuals. Sexual harassment includes unwanted, unwelcome verbal and physical acts. The Civil Rights Act of 1964 created the Equal Employment Opportunity Commission (EEOC) to protect individuals in the workplace from discrimination including sexual harassment. The EEOC defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature..." (Equal Employment Opportunity Commission, n.d.d, para.1). Sexual harassment does not necessarily require unwanted physical contact, but may include remarks, gestures, and comments that are unwelcome or offensive to either gender. The creation of a hostile work environment is also considered a violation of Title VII if the actions of the supervisor

create an offensive, abusive or “hostile work environment” which impacts the subordinates work efficiency and productivity. Such actions become violations when they result in an adverse employment decision, such as the victim being demoted, fired or punitively treated. However, such hostile work environment claims of harassment often remain a matter of personal judgment and perception. Statistics on the number of claims filed with the EEOC based on workplace sexual harassment claims have shown a slight decline in the years between 2010 and 2017 by over 1,000 claims. Yet, the percentage of claims filed by males had increased from 16.2% to 17.1% in 2015, but has since declined to 16.5% in 2017 (Equal Employment Opportunity Commission, n.d.b).

Although the above number of claims has decreased in recent reported years, the numbers themselves may not reflect the depth of the problem. Many workers fail to report such harassment out of fear of retaliation, shame or the difficulty in navigating the claims reporting system (O’Hara, 2013). Indeed, of those workers polled by Huffington Post who admitted to experiencing some form of sexual harassment in the workplace a “full 70 percent said they never reported it” (Berman & Swanson, 2017, para.5). The problem may indeed be much larger than the number of claims filed with the EEOC. The EEOC has identified two principal types of sexual harassment issues in the workplace that are readily defined as “quid pro quo” and the creation of a “hostile work environment.”

- **Quid Pro Quo**

The quid pro quo form of sexual harassment can be translated from the Latin to mean “this for that” or “something for something”. This form of harassment usually occurs when a manager or supervisor demands, suggests or entreats a subordinate either implicitly or explicitly to submit to or engage in some form of sexual favor as a condition for employment, a raise, promotion or job retention. Indeed, this form of sexual harassment results in some form of tangible decision based upon the subordinate’s acceptance or rejection of some form of sexual favor. For example, a manager or supervisor may tell a subordinate female worker that she will receive a larger raise if she dresses sexier. In another example, a manager may state that the female subordinate will be fired if she refuses his sexual advances. Alternatively, the supervisor threatens to write a negative personnel evaluation if the subordinate is unwilling to participate in the supervisor’s sexual advances.

- **“The Hostile Work Environment”**

The hostile work environment results from the conduct of managers, supervisors, co-workers, and even clients that creates a workplace environment that has become intimidating, offensive to the worker and hostile. Indeed, one such problem with this form of harassment is that it is subject to considerable variation in perception and interpretation, and there seems to be disagreement on just what constitutes a hostile work environment. A Supreme Court decision, *Harris v. Forklift Systems* (1993), stated to be actionable sexual harassment must cause “tangible psychological injury.” Such injury may be caused by frequency and severity of workplace conduct, whether it was humiliating or physically threatening, and whether it increasingly interfered with the employees work performance (*Harris v Forklift Systems, Inc.*, 510 U.S.17 (1993)).



A further clarification of a hostile work environment noted that it occurs when the subordinate or co-worker is subjected to unwelcomed and unwanted sexual advances or gender-based conduct that is severe enough to interfere with the individual's job performance, and creates an intimidating, hostile or offensive work place environment. The work environment must be both subjectively and objectively perceived as abusive (Tipton, 2018). Such an environment may be created over a period of months or may result from a single incident, but the actions of the manager or supervisor create a hostile work place where subordinates labor under threat of intimidation. Often times, subordinates or co-workers work performance becomes less than optimal; efficiency in the organization tends to suffer. The hostile environment violates the law when it becomes sufficiently abusive to the individual affected, and creates a workplace that a reasonable person finds abusive (US Department of Labor, 2011).

**Additional workplace behaviors that also contribute to the creation of a hostile work environment include the following:**

- Discussion of sexual activities
- Telling or repeating offensive jokes involving sex, race or disabilities
- Comments on a person's physical appearance or attributes
- Displaying sexually suggestive printed materials, posters and pictures
- Use of indecent gestures
- Sending sexually suggestive emails and text messages
- Use of crude or unacceptable language

HN 2 Mike Mitchell began to experience the ire and ridicule of his Senior Master Chief shortly after the full-time corpsman, Petty Officer Rogers, retired and Mike was assigned the responsibilities for handling a full-time job as a part time reservist. Mike's paper work was delayed, his reports late and his demand that the full-time position be filled and he receive additional administrative training to offset his new responsibilities fell on the Master Chief's deaf ears. Ultimately, he was singled out for punitive action by the Master Chief, and ordered to remain at Warminster for the duration of his reserve contract, while his reserve unit was returned to its home base at Stewart Field. This action represented a hardship for Mike; by commuting from his home in Massachusetts to the Warminster, Pennsylvania drill location he would incur the loss of a day's pay from his regular paramedic job. His work was heavily scrutinized and the Master Chief's behavior had become increasingly offensive toward him. Under further prodding by the Master Chief, he was encouraged to apply for a transfer to the inactive reserves only to have his request turned down by the Master Chief. His work place had become intolerable, hostile and he increasingly felt the victim of abuse and disparate treatment. Apparently, he could do nothing right in the eyes of the Master Chief who seemed committed to making the remaining months of his reserve commitment as uncomfortable and intolerable as possible.

The students will have to determine whether there is sufficient evidence found in the critical incident under Title VII's "hostile work environment" to support Mike's claim that his Master Chief had indeed created a hostile work environment. Did the actions of the Master Chief fall into one or more of the several forms of harassment? The denial of Mike's request for additional administrative training, the excessive scrutiny of his work, his retention at Warminster

after other reserve members returned to Stewart Field, forcing him to drive over six and one half hours each way to attend drill and the denial of his transfer request into the inactive reserves after the Master Chief suggested he do so may well support a charge of harassment and discrimination.

Indeed, students may find that the actions of the Master Chief did not violate Title VII's hostile work environment at all, but more likely evidence some form of bullying, abuse and workplace harassment. Students may make a case for age discrimination, (Mike was now 41 years old) power harassment, psychological harassment or verbal harassment.

2. Assume that you are Mike Mitchell, re-examine the situation you faced with the Master Chief, and implement a course of action you should take to resolve the issues involved and perceived hostile work environment. (LO 2)

A student's high-quality response should include:

- Steps to file a formal complaint
- Importance of gathering evidence, such as witnesses and documentation

Men are frequently reluctant to pursue or file harassment complaints primarily due to the perceived negative impact on their military careers. Mike was among those who were reluctant to file a complaint as he continued to suffer perceived harassment at the hands of the Master Chief in silence. The intimidation of his superior, the questioning of his skill sets, and the retaliation of the Master Chief, while unbearable for Mike seemed to offer no way out. With less than eight months remaining on his reserve contract before discharge what course of action was possible for him to pursue?

Actually, Mike had several options available to him: he could do nothing, accept the current situation and simply complete the remainder of his contract; he could file a harassment complaint with the Navy's Informal Resolution System (IRS); or alternatively, he could engage the assistance of his unit Command Equal Opportunity (CMEO) representative. As a last resort, he could also go up the "chain of command" to his commanding officer, Commander Jack Powers MD. Mike might even consider filing a personal lawsuit against the Master Chief (United States Navy, 2017).

Filing a discrimination claim, going up the chain of command or initiating a personal lawsuit were fraught with many obstacles, which required that Mike take several steps and think through what needed to be done if he were to be successful in righting the perceived harassment. He would need documentation, witnesses, perhaps a face-to-face discussion with the Master Chief, and the determination to file a formal complaint if the Master Chief refused to change her behavior toward him:

- **Documentation** - Mike needed to keep accurate records of all the perceived instances of harassment, including the dates, times and what specifically transpired between him and the Master Chief. The records needed to include any of his co-workers who witnessed the incident or incidents. He also needed to specifically record where the incident took place and include any written evidence such as e-mails, text messages, handwritten or typed notes, etc.
- **Witnesses** – to receive credibility, it is required that the complainant's claim of harassment be confirmed by eyewitness statements. Written statements and collaborative testimony would be necessary to prove his claim. This might be hard

for Mike to accomplish as there were no public clashes between him and the Master Chief witnessed by other personnel. Acting as a witness in a harassment or discrimination complaint could result in a very real threat to one's future military career and his co-workers more than likely would be reluctant to put their careers in jeopardy by acting as witnesses on his behalf (Brenner, 2017).

- **Confront the Harasser** – the least desirable approach, but if the victim feels safe enough or secure enough, he or she might opt to directly confront the harasser face-to-face, and explain that the behaviors and actions are making it difficult to perform one's duties effectively. The victim would have to state unequivocally which actions and behaviors were found offensive and disconcerting, and request that they immediately stop. Mike did not consider this approach to his problem a practical option; it had become clear to him that the Master Chief was intent on making his remaining days as a Reservist as dismal as possible. For Mike, this was clearly not a viable option.
  - **Follow Proper Procedures and Report the Harassment** - if the victim is unable to confront the harasser or finds after confronting the harasser, and requesting that the unacceptable behavior or action cease, and nothing has changed, the harassment should be formally reported to one's superior according to the organization's protocols and procedures. In Mike's situation, his superior, the Master Chief, was the person responsible for the harassment; yet, Mike needed to remain within the bounds of military protocol and the chain of command in filing his complaint. His options were to file his grievance with the Navy's IRS or with the CMEO representative or lastly, reach out directly to the commanding officer of his medical unit, Commander Powers.
  - **File a Formal Complaint** - upon the receipt of the formal complaint either representatives from the IRS or CMEO are required to initiate an investigation of the charge against Master Chief Elaine Barnett within 72 hours.
3. You have been charged by the CEO of your organization to formulate and recommend the principal features that should be included in your organization's workplace harassment and discrimination plan and policy. What features would you include in your proposed plan and policy?

Typically, a well-thought-out student response would include a plan's following features:

- Explicit harassment enforcement policy statement
- Definitions of the various forms of harassment, including sexual harassment, hostile work environment, power harassment and other forms of harassment
- Protocols for response to complaints
- Employee training, including managers and supervisors

In the formulation of a response, students will most likely differ on what features or elements are important to include in an organization's discrimination and harassment plan.

Discrimination and harassment in the workplace have legal ramifications for the organization and its management if allowed to go unchecked in the organization. Typically, the majority of sexual harassment complaints filed with the Equal Employment Opportunity Commission (EEOC) are filed by woman against men, but both genders are protected under Title

VII of the 1964 Civil Rights Act from harassment and discrimination. All managers, supervisors and co-workers are required to comply with the protections and prohibitions under the law.

Commencing with the organization's senior management, the organization needs a firm commitment to enforce compliance of the law and to explicitly rid the workplace of any forms of discrimination and harassment. Thus, management is tasked with creating a clear and transparent harassment policy that holds itself accountable for protecting employees from discrimination and harassment in the workplace. Of prime importance is that the policy be communicated to all employees in the organization and rigorously enforced. Elements of a policy are:

- **A Written, Well Defined Harassment Enforcement Policy Statement** - the organization should include a very strong policy statement, and state in explicit terms that the organization will neither condone nor tolerate any form of workplace discrimination or harassment from any employee. In essence, the organization has a zero-tolerance policy when it comes to harassment, sexual or otherwise, in the workplace (Hrab, 2014).
- **Sexual Harassment Defined** – Clearly one of the most persistent and growing problems in the workplace, sexual harassment remains a principal ethical and legal concern for all organizations. The Equal Employment Opportunity Commission (EEOC) has defined sexual harassment as “unwelcomed sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature...” In further clarification, the EEOC also stated that sexual harassment may extend to the employees' workplace in the form of behavior or conduct that “has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating or offensive work environment” (Equal Employment Opportunity Commission, n.d.d). In addition to the two most frequent forms of sexual harassment that need to be clearly stated, quid pro quo and hostile work environment, other harassing and unacceptable harassment behaviors, also need to be stated as part of the plan. Specific examples of unacceptable behavior in the workplace include:
  - Physical assault, rape and sexual battery (physical harassment)
  - Physical contact of a sexual nature, pinching, patting, brushing against another's body, groping (criminal acts)
  - Verbal abuse of a sexual nature (verbal harassment)
  - Unwelcomed flirtations or propositions
  - Graphic verbal comments about another's individual body parts (verbal harassment)
  - Displays in the workplace of sexually suggestive objects, pictures, cartoons, pornography
  - Sexual jokes, tricks and sexually explicit emails (Jencraft Corporation, 2003)

All of the above should be included in the organization's definition of what constitutes sexual harassment.

- **Others Forms of Harassment and Discrimination**- several others forms of unacceptable workplace discrimination and harassment need to be also specifically outlined and clearly defined: hostile work environment, personal harassment, psychological harassment, power harassment, verbal harassment, age discrimination and harassment, religious discrimination and cyber-bullying; all are unacceptable. Protocols and guidelines for handling such claims need to be clearly stated in the plan.

- **Rigorous Enforcement without Exceptions** - the adopted discrimination and harassment policy will be enforced at all levels of the organization. Senior managers, indeed, managers at all levels, supervisors, and co-workers, who after a thorough and complete investigation have been found to have engaged in discrimination or harassment of an employee should be subjected to established discipline protocols, such as verbal and written reprimands, additional sensitivity training, demotion, suspension, and as necessary termination of employment.
- **Protocols for Response to Complaints for Sexual Harassment** - the organization should establish and communicate to the rank and file the protocols for filing harassment complaints. Managers need to take such complaints very seriously, and initiate an investigation quickly to arrive at the truth in the complaint. The procedure and chain of command for filing a complaint, and appealing a decision should be communicated to all employees. As part of that process, it is of equal importance that the organization designates more than one person to receive complaints. Indeed, multiple designees for handling such complaints will eliminate any potential conflict of the victim having to report the complaint to the harassing supervisor (as would be the case for Mike), or, even, a close friend of the harasser. Senior managers, the human resource manager and, even the president of the organization can all be part of the designated recipients of complaints. All investigations of harassment complaints must be thorough and initiated quickly. A fact finding investigation should interview the parties involved, and potential witnesses, and all interviews should be documented. Any prior claims of harassment against the alleged harasser should be noted in the investigation. The ultimate decision reached must be discussed with both parties to the claim, and a further opportunity for additional information provided to allow the investigator(s) to either prove or disprove the truth of the claim (Hrab, 2014).
- **No Reprisals** – when adopting a discrimination and harassment plan and policy, the organization must assure all employees that it will protect the claimants against retaliation for filing a harassment complaint. Employees should feel free to raise concerns and file a claim without fear of reprisals from the harassers, managers or supervisors. The organization's protocols should provide confidentiality for claimants as far as possible, and in compliance with the organization's duty to prevent further unacceptable behaviors and actions.
- **Some Examples of Sexual Harassment Not Easily Recognized** - employers, managers, supervisors, and co-workers should understand that any form of unwelcomed sexual behavior or the creation of a hostile work environment that negatively impacts a worker's job performance can be considered harassment. A man harassing another man or woman, a woman harassing a man or another woman, or refusing to accept transgender employees can all lead to sexual harassment claims. In certain instances, offering a simple compliment may be considered sexual harassment. Workplace pressures for employees to comply and conform to traditional gender norms are considered sexual harassment under Title VII. Thus, stating to a woman that she is not acting feminine or to a man that he is not acting masculine is a violation, and can result in a sexual harassment claim.
- **Employee Training in Sexual Harassment** - annually, at a minimum, the organization should implement training and review its sexual harassment policy. The meaning of sexual harassment, the need for the workplace to be free of such discrimination, role-playing with sexual harassment scenarios, and a review of protocols and procedures for

filing a claim should all be addressed. Employees should be encouraged to come forward and file a claim if sexually harassed (Hrab, 2014).

- **Hold Training for All Managers and Supervisors** - training for all managers and supervisors should be held on an annual basis. The management team should have a clear understanding that discrimination and harassment are a violation of Federal and State laws, places the firm in legal jeopardy and has no place in the organization. The definitions and examples of the varied types of harassment, the need for vigilance in the workplace, claim protocols and procedures, and role playing harassment scenarios should be reviewed and updated as necessary. The sessions should focus on how managers and supervisors should properly deal with sexual harassment and other forms of discrimination complaints filed by employees (Barreiro, 2019; Brenner, 2017).
- **Monitor the Organization's Workplace for Potential Violations** - managers of the organization should make it a common practice to walk around and engage employees in conversation about the workplace environment and working conditions. Workspaces should be observed for potentially offensive materials, posters, sayings, signage, and sexually inappropriate cartoons. Appropriate workplace behavior should be encouraged among all employees. The lines of communication between managers and employees should be open to receive any complaints.
- **Establish and Disseminate a No Tolerance Policy** - management of the organization must state in explicit terms that it will not allow nor tolerate discrimination or harassment in the organization's workplace. Under Title VII of the 1964 Civil Rights Act organizations, management and supervisors all have a legal duty and obligation to rid the workplace of discrimination. The no tolerance policy should be readily available for all employees to read, publicized in the employee handbook, and re-enforced in annual training sessions. Employees should clearly understand that the organization does not condone nor tolerate discrimination or harassment against any of the organization's employees.

### **General discussion:**

Instructors may desire to explore the issue of discrimination in the workplace more fully by having the students discuss examples from their own personal, family and friends' experiences, which involved the creation of a hostile work environment, age discrimination, psychological harassment, verbal harassment, or sexual harassment such as quid pro quo. Additionally, instructors might wish to explore the role that power plays in the workplace. Specifically, they might wish to have the students analyze and discuss the role that power plays in creating sexual harassment in the work environment. (See Pedagogical Materials below)

### **Other pedagogical materials:**

Appendix A is a student handout that contains information relating to the naval military ranks discussed in this critical incident and compares them to positions found in the business hierarchy. It is suggested that instructors disseminate this material along with the critical incident to ensure a better student understanding of the naval ranks and hierarchy involved in the critical incident. Instructors may wish to assign a short research project on the subject by having students survey local small, mid-sized businesses and their college/university on their sexual

harassment and discrimination policies, and how they handle employee/student complaints on sexual harassment and other forms of discrimination and harassment such as age, gender, etc. Students may be assigned to develop sexual harassment scenarios, male-female, male-male and female-female, and engage in classroom role playing for a better understanding of harassment.

In addition to the above, the instructor may also wish to discuss sexual harassment from the perspective of power and control. The following question may be used to discuss this issue: Analyze and discuss the role that power plays in sexual harassment in the workplace. Indeed, the role of power in the workplace and the abuse of power often result in sexual harassment. Frequently, sexual harassment is all about the exercise of power; it is about one individual controlling and threatening another individual (McLaughlin, Uggen & Blackstone, 2012).

Indeed, power in the hands of the wrong manager or supervisor can be dangerous as was seen in the relationship between HM 2 Mike Mitchell and his Master Chief. The manager-subordinate or supervisor-subordinate relationship in most organizations, including the military, is typical of the unequal distribution of power. The manager or supervisor has the ability to offer rewards or to employ coercion and intimidation toward the subordinate often placing the subordinate in a difficult situation that results in compliance. Managers and supervisors in positions of power must not be allowed to exercise their power in a discriminatory or bullying manner. A manager who engages in such behavior and activity creates an unsafe and hostile work environment for the harassed and subjects the organization to complaints and legal liability. Thus, sexual harassment in the workplace is a common outcome and form of power harassment ("What is", 2019).

In her study, "Gender Construction of Power during Discourse about Sexual Harassment: Negotiating Competing Meanings," Debbie Dougherty of the University of Missouri, Columbia examined the problem of sexual harassment in the workplace and why it occurs. Her study determined that sexual harassment occurred due to power. Her survey respondents confirmed what previous researchers had stated: sexual harassment was more about power than sex (Dougherty, 2006). Additional findings in the Dougherty (2006) survey also confirmed differing perceptions between men and women as to what constituted power and sexual harassment:

- Men viewed power as part of organizational authority and sexual harassers were viewed traditionally as managers and supervisors. Co-workers could also harass one another, but these activities were often viewed as workplace "misunderstandings."
- Women's views were a bit more complicated. Women's perception of power was that power was a negotiated process between the harasser and the harassed. Thus, each member of the organization who held a position of power could be perceived as a potential harasser.
- Further, the study confirmed an additional discrepancy between how men and women viewed behavior, actions, and forms of communication that were considered sexually offensive. Women tended to take a much broader view of offensive behaviors and actions than did male respondents.
- The study also noted that there was much less agreement on what exactly constituted sexual harassment in a hostile work environment.

In another study of sexual harassment in the workplace, "Sexual Harassment, Workplace Authority and the Paradox of Power," McLaughlin et al. (2012) suggested that workplace sexual harassment may be more peculiar to women in power. The study noted that regardless of the position in the organization, sexual harassment reduced women to mere sex objects in ways that

negated their power. Indeed, women managers and supervisors were often targets of harassment by co-workers and even subordinates who sought to put them in their rightful place.

Women managers and supervisors in male dominated industries were also more vulnerable to sexual harassment. If, in a management position, these women frequently experienced a lack of support from male subordinates, the feelings were that this is not the place for women. Such managers and supervisors were also subjected to more rigid gender expectations which elicited unwelcomed responses from male subordinates and even taunts about their ability to perform the traditionally male job.

While the study found evidence that female supervisors were more likely to become targets of harassment, the authors concluded that sexual harassment in the workplace functioned as a tool to enforce gender appropriate behavior. As was revealed in the Dougherty (2006) study, workplace harassment was not really about sexual desires, but was more associated with power, control and domination (McLaughlin, et al., 2012).

### **Epilogue:**

Mike Mitchell, after being advised to apply for and then denied a transfer into the inactive reserve, placed a telephone call to the commanding officer of his reserve medical unit, Commander Jack Powers, MD, and stated that it was his intention to file a formal complaint of sexual harassment against Senior Master Chief Elaine J. Barnett based upon the Master Chief's behavior, intimidating actions toward him and her creation of a hostile work environment. Commander Powers requested that Mike hold off for a few days to allow him to further investigate the issue of his denied transfer request. Three days later, the Commander telephoned Mike with the good news that his request to be transferred to the inactive reserve for the balance of his contract had been approved effective immediately. Mike did not file a sexual harassment claim against the Master Chief; he completed his eight-year enlistment in the US Navy Reserve and was honorably discharged.

There is neither a link nor direct evidence to suggest that Mike's willingness to file a formal complaint of harassment against the Master Chief reversed the denial of his request for transfer into the inactive Reserve. Perhaps, neither the Master Chief nor the commanding medical officer, Jack Powers MD, wanted an investigation on harassment in the workplace that could negatively impact their military careers. Nonetheless, Mike's transfer was quickly approved after he threatened to file a harassment complaint.



**Appendix A:**

**Naval Ranks and Comparative Civilian Positions**

The US Navy ranks noted in the CI may be unfamiliar to both instructors and students. To better understand these ranks, it is best to place them in the context of a typical business management hierarchy:

- Commander, may be equated to a mid-level civilian manger (plant manager, operations manager, division head.)



Commander

- Master Chief Petty Officer, may be equated to a senior level first line supervisor (there are only 2,800 Master Chiefs in the US Navy) may be similar to an office manager



Senior Master Chief

- HN1, HN2 and HM3 are petty officers 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> class (Naval Corpsman) who may be respectively equated to first line supervisors, foreman, and coordinator



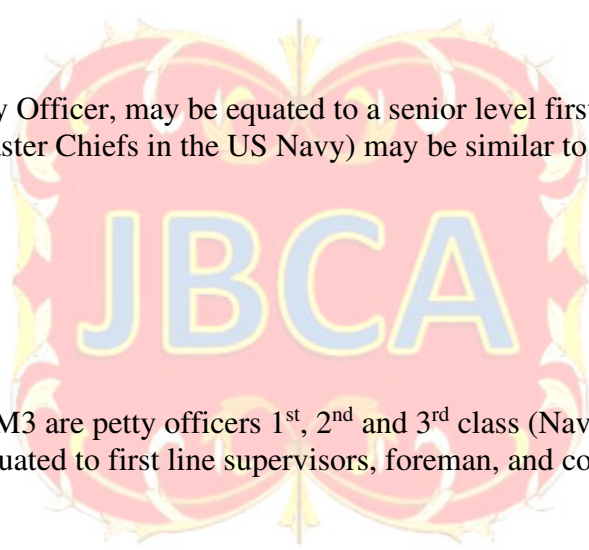
HN1



HN2



HN3



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