

IN THE MATTER OF TOM BRADY

**POST-HEARING BRIEF
OF THE NFLPA AND TOM BRADY**

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PRELIMINARY STATEMENT

The unprecedented four-game suspension of Tom Brady for “general awareness” of alleged misconduct by Club employees must be overturned for myriad grounds under the CBA.

First, the punishment defies the established law of the shop requirement of fair “notice” in at least three ways: (i) Brady had no notice that he could be disciplined pursuant to an NFL Policy applicable only to—and provided only to—*Clubs* (not players); (ii) Brady had no notice that he could be punished for “general awareness” of misconduct allegedly committed by someone else; and (iii) Brady had no notice that he could be suspended for declining to comply with a request for electronic communications propounded by Paul, Weiss without any warning that non-compliance could lead to discipline. Each one of these fundamental defects in notice requires setting aside the discipline; Brady would become the first player in NFL history to be suspended for *any* of these reasons.

Second, Brady’s punishment is wildly disparate. Putting aside the lack of notice, and even crediting every word of the Wells Report, a four-game suspension cannot stand under the CBA requirement of fair and consistent treatment. No player has ever been suspended for comparable behavior, for which the specified player penalty is a fine.

Third, new information presented to the Commissioner at the hearing—including testimony from Brady and Robert Kraft, and the production of communications requested by Paul, Weiss—established that Brady in fact knew nothing about alleged ball deflation and that he decided not to comply with the Paul, Weiss document requests solely on the advice of his counsel and agents (and Brady otherwise fully cooperated with Paul, Weiss). New evidence also established that the NFL’s failure to have any protocols for testing ball pressure meant that critical data was either not recorded at all or not recorded reliably such that no credible

conclusions could be drawn from the Exponent Report. At bottom, there is no credible evidence that Brady was generally aware of ball tampering by Patriots Club employees.

Fourth, the discipline flows from an improper delegation of the Commissioner’s “exclusive” authority to impose conduct detrimental.

Finally, these proceedings have, at every turn, deprived Brady of fundamental fairness, rendering any decision to uphold his suspension legally defective.

ARGUMENT

“[D]iscipline under [Article 46] must be fair and consistent.” NFLPA Ex. 124, *Rice*, slip op. at 8. The role of the Article 46 Hearing Officer is to “review[] the discipline for consistency of treatment, uniformity of standards for parties similarly situated and patent unfairness or selectivity.” NFLPA Ex. 113, *Bounty* Final Decision, slip op. at 4. As Judge Jones held in *Rice*, “[w]here the imposition of discipline is not fair or consistent, an abuse of discretion has occurred” and the discipline must be overturned. NFLPA Ex. 124 at 8. This is the “agreed” standard of review. NFLPA Ex. 126, *Peterson*, slip op. at 3.

I. THE DISCIPLINE VIOLATES THE CBA REQUIREMENT OF NOTICE

The Commissioner testified under oath in *Rice* that the NFL is “required to give proper notification” of player discipline. NFLPA Ex. 122, *Rice* Tr. 100:13-14. And a long line of CBA precedents—the established law of the shop—holds that “fair and consistent” treatment requires that players have notice of what conduct constitutes “conduct detrimental,” as well as the potential disciplinary consequences of such conduct. In *Rice*, for example, Judge Jones held that notwithstanding the “broad deference afforded to him through Article 46,” Commissioner Goodell could not retroactively apply a new version of the Personal Conduct Policy because it would violate the CBA requirement of notice. NFLPA Ex. 124 at 16; *see also* NFLPA Ex. 113, *Bounty* Final Decision, slip op. at 6 (holding that “a sharp change in . . . discipline can often be

seen as arbitrary and as an impediment rather than an instrument of change.”); NFLPA Ex. 91, *R. Langhorne* Decision, at 25 (setting aside fine and suspension because player “was entitled at some time to be placed on notice as to what consequences would flow from his refusal to [abide by the rules]. Any disciplinary program requires that individuals subject to that program understand, with reasonable certainty, what results will occur if they breach established rules.”); NFLPA Ex. 101, *R. Brown* Decision (vacating team discipline because player did not receive adequate notice of rule he was accused of violating); NFLPA Ex. 99, *L. Coles* Decision (same).

Most recently, in *Peterson v. NFL*, District Court Judge Doty held that the notice requirement is part of the “essence of the CBA” and cannot lawfully be disregarded by CBA arbitrators. NFLPA Ex. 153, *Peterson* Dist. Ct. Order, slip. op. at 13-14. This judicial order binds the NFL and controls the result in this proceeding.

A. It Is Undisputed That Brady Had No Notice of the Relevant Policy

As NFL Executive Vice President Troy Vincent testified (Hr’g Tr. 250:13-20), Brady’s discipline was imposed pursuant to the NFL’s Policy on Integrity of the Game & Enforcement of Competitive Rules (“Competitive Integrity Policy”), which is incorporated into the NFL’s Policy Manual for Member Clubs-Game Operations (“Game Operations Manual”), and provided to “Chief Executives, Club Presidents, General Managers, and Head Coaches.” NFLPA Ex. 115, Game Operations Manual, at A2. The policy is not given to players, and does not apply to players.¹ Vincent testified as much:

Q. Now, the policy that you cite in your letter, in your discipline letter regarding Mr. Brady—well, let me ask you this. Where do you find the policy that says that footballs can’t be altered with respect to pressure? Is that going to be in the competitive integrity policy that Mr. Wells cited in his report?

¹ For example, the Policy provides that “[d]isciplinary matters, including hearings and appeals, shall be processed pursuant to Article 8 of the NFL Constitution and Bylaws.” *Id.* at A3. In contrast, the CBA provides that all *player* conduct detrimental appeals will be processed “exclusively” as set forth in Article 46.

A. Game-Day Operations Manual.

Q. In the manual? Okay. Is it correct, to your knowledge, that the manual is given to clubs and GMs and owners, et cetera, but the manual is not given out to players; is that correct, to your knowledge?

A. That's correct, to my knowledge.

Hr'g Tr. 250:13-251:1. Vincent also admitted he never received a copy of this policy as a player (Hr'g Tr. 251:2-4), Ted Wells testified he did not investigate whether the Competitive Integrity Policy was given to players (Hr'g Tr. 272:12-273:3), and, in fact, it is not. NFLPA Ex. 114, League Policies for Players ("Player Policies"). Indeed, Brady testified that he has no recollection of ever seeing or receiving the Competitive Integrity Policy prior to these proceedings. Hr'g Tr. 98:8-99:15.

The hearing record thus indisputably shows Brady had no notice of the Competitive Integrity Policy and, to the NFLPA's knowledge, no player in history has ever been punished for allegedly violating this Policy. Brady's discipline must be overturned for this reason alone.²

B. It Is Undisputed That Brady Had No Notice He Could Be Disciplined for "General Awareness"

No NFL Policy or precedent provides notice that a player may be disciplined for "general awareness" of alleged misconduct committed by another person. In fact, this has never happened to any player in the history of the NFL.

First, the NFL's Game and Field Equipment Policy ("Equipment Policy")—incorporated into the Game Operations Manual (and thus not provided to players)—sets forth the standard for imposing discipline for tampering with game footballs:

If any individual alters the footballs, or if a non-approved ball is used in the game, *the*

² The only NFL Policy that players receive that could even conceivably apply to Brady's alleged conduct is contained in the Player Policies. The Player Policies identify punishments for equipment violations, including those aimed at gaining a competitive advantage, but provide only for modest *finer*s—not suspensions as potential discipline. NFLPA Ex. 114, Player Policies, at 15, 20.

person responsible and, *if appropriate, the head coach or other club personnel* will be subject to discipline, including, but not limited to, a fine of \$25,000.

NFLPA Ex. 115 at A40 (emphases added). Even if the Equipment Policy applied to players, it does not provide for discipline for “general awareness” of infractions. To the contrary, the only persons subject to discipline for ball tampering are (1) “the person responsible” and (2) “if appropriate, the head coach or other club personnel.” *Id.* Brady is neither.

No one alleges that Brady is “the person responsible” for deflating the footballs—that is allegedly McNally and Jastremski. As the Wells Report asserts: “Brady . . . was at least generally aware of the inappropriate activities *of McNally and Jastremski.*” NFLPA Ex. 7 at 2 (emphasis added); Hr’g Tr. 273:9-274:3 (Wells) (no finding of participation in ball deflation by Brady). And this finding in the Wells Report is, as attested to by Vincent, the sole factual basis for Brady’s suspension. *See* Hr’g Tr. 244:19-24 (Vincent). Moreover, Brady is not “the head coach or other club personnel” who may be punished under the Equipment Policy. NFLPA Ex. 115 at A40.

Second, although one need look no further than the Competitive Integrity and Equipment Policies to conclude that Brady may not be punished for “general awareness” of an alleged violation, there is no NFL precedent or practice under *any* Policy for disciplining a player for being generally aware of the behavior of others. For example, players may be generally aware of other players using steroids or recreational drugs—in violation of the Drug Policies—but there is no provision for imposing discipline on the basis of such “general awareness.” As another example, in *Bounty*, the entire Saints defense was generally aware of the alleged “bounty” or “pay for performance” program. But Commissioner Goodell only found certain Saints defenders guilty of conduct detrimental based on their specific alleged *participation* in the program—and even *those* suspensions were subsequently vacated by Commissioner Tagliabue, because of the

lack of fair and consistent treatment, including adequate notice. As a final example, in connection with the Richie Incognito “bullying” investigation, Wells found that several members of the Dolphins offensive line were generally aware of Incognito’s actions toward Jonathan Martin—indeed, some of those players participated in the conduct.³ The Commissioner, however, imposed no discipline for their “general awareness,” just as no conduct detrimental or other penalties have ever previously been imposed on players merely for “general awareness” of the asserted improprieties of others.

C. It Is Undisputed That Brady Had No Notice He Could Be Disciplined for Declining to Respond to the Wells Discovery Requests

The Competitive Integrity Policy references a cooperation obligation. NFLPA Ex. 115 at A3. However, that Policy is not given to—and does not apply to—players. What’s more, the Competitive Integrity Policy does not give notice that a suspension may issue for a failure to cooperate, especially since the penalty for a full violation of the ball tampering provision starts with a \$25,000 fine (with no reference to suspensions). NFLPA Ex. 115 at A40.

As Wells testified, he did *not* inform Brady that he could be disciplined for deciding not to respond to the discovery request: “I want to be clear—I did not tell Mr. Brady at any time that he would be subject to punishment for not giving—not turning over the documents. I did not say anything like that.” Hr’g Tr. 336:15-23; *see also id.* at 86:8-15 (Brady). Nor did Brady have any notice that Wells might draw an “adverse inference” about his underlying conduct based on Brady not producing requested documents (*see discussion infra*). Instead, as Brady testified, he would have produced the documents had he been given notice by Wells or the League about the

³ *See* Wells Report (Incognito), attached hereto as Exhibit A, at 3 (“Martin was indeed harassed by Incognito, who can fairly be described as the main instigator, and by Jerry and Pouncey, who tended to follow Incognito’s lead.”); *id.* at 32 (“A few offensive linemen, however, said that Martin was bothered, especially by the taunts about his sister”); *id.* at 72-73 (“One player, whom we found credible, said that Incognito and others routinely mocked Martin’s sister and described the taunting as ‘an everyday constant thing.’”).

potential consequences of not doing so. *Id.* at 86:16-20.

Significantly, players *do* have notice that they might be fined (not suspended) for failing to cooperate with investigations under the Personal Conduct Policy. *See* NFLPA Ex. 125, Personal Conduct Policy, at 4 (“A failure to cooperate with an investigation or to be truthful in responding to inquiries will be separate grounds for disciplinary action.”). But there is no corresponding provision about discipline flowing from a player’s failure to cooperate in a Competitive Integrity Policy investigation, which is a critical omission because even if that Policy could properly be applied to Brady, it does not provide notice of possible suspension for declining to respond to document requests.

II. THE PUNISHMENT OF BRADY IS WILDLY DISPARATE

As Commissioner Goodell has testified, discipline for conduct detrimental has to be consistent with other cases. NFLPA Ex. 122, *Rice* Tr. 164:25-165:6. “I do accept that I have to be consistent with consistent circumstances, and so if there are consistent circumstances, I think that’s about fairness, and fairness would be you should be as consistent as possible in your discipline, yes.” *Id.* This applies equally to Brady: “I have great admiration and respect for Tom Brady, but the rules have to be enforced on a *uniform* basis and they apply to everybody in the league.” NFLPA Ex. 191, Goodell Press Conference, at 3419 (emphasis added). Even if Brady had notice of the applicable Policies and potential consequences for “general awareness” and not producing documents, a four-game suspension—indeed, any suspension—for such conduct is fundamentally *inconsistent* with how other players have been treated in comparable circumstances.

A. No Player Has Ever Been Fined—Much Less Suspended—for Violating the Competitive Integrity Policy

No player in NFL history has ever been fined or suspended for violating the Competitive

Integrity Policy. Hr’g Tr. 245:12-21 (Vincent). Only Clubs and Club personnel have been punished. For example, in 2009, the NFL suspended Cortez Robinson, a member of the New York Jets equipment staff, after he “attempted to use unapproved equipment to prep the K[icking] Balls prior to” a Jets game against the New England Patriots. NFL Ex. 73 at 1597. According to the NFL, Robinson’s “attempt to use unapproved materials to prep the K[icking] Balls could [have] easily be[en] interpreted as an attempt to gain a competitive advantage.” *Id.*

Notably, the Jets kicker—the *player* who could have benefitted from the alleged “attempt to gain a competitive advantage” (*id.*) and been “generally aware” of it—was not investigated, let alone disciplined. Hr’g Tr. 250:7-12 (Vincent). (The NFL’s decision not to investigate was entirely consistent with the Equipment Policy because Robinson—not the kicker—was the “person responsible” for the alleged competitive violation. NFLPA Ex. 115 at A40.)

The NFLPA is aware of only two other situations concerning potential ball tampering, neither of which led to any player discipline for “general awareness.”

- On November 30, 2014, Green Bay Packers Quarterback Aaron Rodgers stated publicly that he “like[s] to push the limit to how much air we can put in the football, even go over what they allow you to do and see if the officials take air out of it.” NFLPA Ex. 177. No investigation or punishment ensued.
- On November 30, 2014, the Vikings were caught on national television using heaters to warm footballs in sub-zero temperature in violation of the Game Operations Manual. NFLPA Ex. 174. The NFL sent a warning to *the Club*: “[Y]ou can’t do anything with the footballs in terms of any artificial [sic], whether you’re heating them up, whether it’s a regular game ball or kicking ball, you can’t do anything to the football.” *Id.* at 3350. No Vikings’ players were investigated or punished for “general awareness” that the balls were warm.⁴

The NFL may not leap from a history of *no* player discipline for ball tampering to a suspension—let alone a four-game suspension (25% of a season)—and comply with the CBA

⁴ Vincent’s attempt to distinguish this incident at the hearing by explaining that it involved “a game ball employee that took it upon himself to warm a football” does not change the fact that the NFL did not even feel the need to investigate whether any player was generally aware of the tampering (for example, a Quarterback would surely be “generally aware” of a “warm” ball in freezing cold weather). Hr’g Tr. 246:10-16 (Vincent).

mandate of fair and consistent treatment. In fact, the Equipment Policy itself provides for a fine of \$25,000 without any express mention of suspensions for anyone: “[i]f any individual alters the footballs, or if a non-approved ball is used in the game, the person responsible and, if appropriate, the head coach or other club personnel will be subject to discipline, including, but not limited to, a fine of \$25,000.” NFLPA Ex. 115 at A40.⁵

The Player Policies further illustrate the disparate nature of any player suspension for an alleged competitive infraction, let alone for just being “generally aware” of one. They identify player punishments for equipment violations that “affect[] the integrity of the competition and can give a team an unfair advantage”—such as putting stickum on receiver gloves (NFL Ex. 114 at 15)—and subject first-time player offenders to a fine of \$8,268 for a specified violation, or a \$5,512 fine for violating a “catchall” provision for so-called “Other Uniform/Equipment Violations.” *Id.* at 15, 20. Even assuming a violation by Brady, the collectively bargained fine for a first-time offender is the maximum that Brady could be punished. There simply is no comparison between this modest level of fines for players who *personally* commit the violation and the devastating four-game suspension of Brady for purported “general awareness” of someone else’s violation. *No* suspension can be justified as fair and consistent.

Commissioner Tagliabue’s decision in *Bounty* controls. In vacating the players’ suspensions, Commissioner Tagliabue held that “the League ha[d] not previously suspended or fined players for some of the activities in which [the Saints’] players participated and has in the recent past imposed only minimal fines on NFL Clubs—not players—of a mere \$25,000 or less.”

⁵ The “including, but not limited to” language means that the League is not limited to a \$25,000 fine but it also means that a four-game suspension is not fair and consistent treatment. Under the well-established canon of contract interpretation *ejusdem generis*, “[w]here comprehensive words in a contract are followed by an enumeration of specific things . . . the things coming within the comprehensive words will be limited to those of a *like nature to those enumerated*.” See 22 N.Y. Jur. 2d Contracts § 252 (2009) (emphasis added). A suspension of even one game, let alone four, is not of a “like nature” to the enumerated \$25,000 fine.

NFLPA Ex. 113 at 3. He continued: “[T]he NFL’s decision to suspend a player here for participating in a program for which the League typically fines a club certainly raises significant issues regarding inconsistent treatment between players and teams.” *Id.* at 18. This is the law of the shop.

B. No Player Has Ever Served Any Suspension for Alleged Non-Cooperation

As established above, Brady had no notice that he could be punished for not producing documents in a Competitive Integrity Policy investigation—in contrast to a Personal Conduct Policy investigation. However, *even in Personal Conduct Policy cases*, the law of the shop is that players may be fined—not suspended—even for obstruction (which is worse than merely declining to produce documents). Again, *Bounty* controls:

[T]he NFL fined Brett Favre \$50,000—but did not suspend him—for obstruction of a League sexual harassment investigation. Although not entirely comparable to the present matter, this illustrates the NFL’s practice of fining, not suspending players, for serious violations of this type. There is no evidence of a record of past suspensions based purely on obstructing a League investigation. *In my forty years of association with the NFL, I am aware of many instances of denials in disciplinary proceedings that proved to be false, but I cannot recall any suspension for such fabrication. There is no evidence of a record of past suspensions based purely on obstructing a League investigation.*

NFLPA Ex. 113 at 13 (emphasis added); *see also* NFLPA Ex. 170; NFLPA Ex. 104. Based on this 40-year history of *not* suspending players for obstruction, Commissioner Tagliabue vacated the suspension of Anthony Hargrove despite finding he had obstructed.

The NFLPA and Brady do not know the proportion of the four-game suspension attributable to his alleged non-cooperation, as opposed to “general awareness” of the Competitive Integrity Policy infraction. But it bears emphasis that *the entire* suspension is infected by the non-cooperation issue. The hearing revealed that Brady’s decision to follow his counsel’s advice and not produce his personal communications led Wells to draw an adverse inference about Brady’s *underlying conduct*. Hr’g Tr. 304:9-305:1 (Wells). In fact, Wells

testified that he might not have reached his conclusion about Brady’s alleged “general awareness” if not for Brady following his lawyer-agents’ advice about non-production. *Id.* This disparate treatment cannot pass the controlling fair and consistent treatment standard.

III. NEW INFORMATION DEMONSTRATES THERE IS NO FACTUAL BASIS FOR THE BRADY DISCIPLINE

Relying exclusively on the factual conclusions in the Wells Report, no one at the League—not Vincent and not Commissioner Goodell—had previously heard from any of the hearing witnesses. For example, Commissioner Goodell publicly stated that he wanted to hear “directly from [Brady]” and was interested in “new information.”⁶ Such “new information” should be considered *de novo* by the Hearing Officer, giving no deference to the original disciplinary findings made without the benefit of such evidence. As Commissioner Tagliabue (serving as Hearing Officer on discipline imposed by Commissioner Goodell) explained:

I am giving appropriate deference to Commissioner Goodell’s reasonable findings and am applying the same standard of review to findings of violation and to findings underlying the level of discipline. I am not substituting my judgment for the Commissioner’s judgment, *except insofar as I have received and considered new material information of which the Commissioner was unaware.*⁷

Here, most of the evidence presented at the hearing was “new material information of which the Commissioner was unaware” (*id.*), and it demonstrates that the discipline should be set aside.

A. New Information About Brady’s Alleged Lack of Cooperation

The hearing revealed that Brady’s non-production of the requested documents was the linchpin of Wells’ findings about “general awareness.” Not only did Brady’s decision result in some unspecified portion of the four-game suspension for non-cooperation, it caused Wells to draw an “adverse inference” that “hurt how [he] viewed [Brady’s] credibility” in denying any

⁶ NFLPA Ex. 191 at 3418.

⁷ NFLPA Ex. 113, *Bounty* Final Decision, slip. op at 4 (emphasis added).

knowledge about ball tampering.⁸ Yet the hearing also revealed critical new information about *why* Brady made the decision not to produce his personal communications and *how* this decision does not support any adverse inference.

Brady testified that his decision not to produce his personal communications was entirely the product of his attorneys' advice, who told him it was neither proper nor necessary to comply, given the absence of any appropriate authority cited by Wells.⁹ Brady further testified that *if* his lawyers had advised him to turn over electronic information, he “[a]bsolutely” would have complied,¹⁰ as he would have if Wells had explained that non-production could lead to punishment.¹¹ This new evidence that Brady made a good-faith decision to follow the advice of his long-time counsel, without being informed there would be severe consequences for non-compliance, compels vacating the suspension.

Indeed, Wells testified he is not even sure he would have made the “general awareness” finding if Brady had produced the requested information. Hr’g Tr. 304:23-305:1. The new evidence surely would not support it given the showing that Brady did not impede the Paul, Weiss investigation because Wells had all of the relevant documents from other sources. With respect to the requested emails, they have now all been produced, and there is not one relevant email.¹² With respect to the requested phone log, Brady has gone beyond the Paul, Weiss request and produced all of his phone bills for the relevant time period.¹³ They show nothing incriminating either. The only “delta” between the Paul, Weiss requests and Brady’s recent production relates to text messages—but the new hearing evidence shows that those

⁸ Hr’g Tr. 304:16-20 (Wells).

⁹ Hr’g Tr. 84:18-85:9 (Brady).

¹⁰ *Id.* at 85:10-12.

¹¹ *Id.* at 86:8-20.

¹² Compare NFL Ex. 69 at 1580-81 with NFLPA Exs. 2, 4.

¹³ Compare NFL Ex. 69 at 1579 with NFLPA Exs. 1, 3.

communications also provide no basis for an adverse inference.

Brady could not produce text messages for the relevant period because of his career-long practice of regularly recycling his phones¹⁴—and he did not do anything other than follow his ordinary practice here.¹⁵ However, his produced phone bills show when and with whom Brady exchanged text messages. These records confirm that Brady had no phone communications—voice or text—with McNally.¹⁶ As to communications with Jastremski and Schoenfeld, the bills show that essentially all of those communications are discussed in the Wells Report—meaning Paul, Weiss already had the text messages.¹⁷ For the few communications with Jastremski or Schoenfeld reflected on Brady’s bills but not referenced in the Wells Report, that is presumably because those communications are irrelevant, and Brady testified that such communications had nothing to do with the alleged ball tampering, and no incriminating documents were withheld.¹⁸ Moreover, there is no dispute that Brady answered every question from the Paul, Weiss team during his multi-hour interview, including questions about the specific communications at issue.¹⁹ The alleged non-cooperation issue should be put to rest.

B. New Evidence That Brady Was Not Generally Aware of Wrongdoing

Brady testified before the Commissioner under oath—categorically, emphatically, and credibly—that he knew *nothing* about ball deflation.²⁰ This was precisely the type of “new information” that the Commissioner wanted to hear “directly from [Brady.]”²¹

¹⁴ Hr’g Tr. 87:7-88:2 (Brady).

¹⁵ After the hearing, Brady contacted AT&T to see if it was possible to recover the text messages directly from the carrier, but was informed it is not possible. See Ex. B.

¹⁶ Hr’g Tr. 81:21-82:1; 139:19-140:8 (Brady) (explaining that Brady did not know or communicate with McNally); see also NFLPA Ex. 1 (reflecting no phone communication with McNally).

¹⁷ NFLPA Ex. 3.

¹⁸ Hr’g Tr. 85:13-86:1; 140:9-141:6 (Brady).

¹⁹ Hr’g Tr. 89:17-90:9 (Brady); *id.* 340:24-341:9 (Wells).

²⁰ See, e.g., Hr’g Tr. 50:15-20; 50:21-51:21; 75:4-25; 79:14-17; 95:12-97:11 (Brady).

²¹ NFLPA Ex. 191 at 3418.

But that is not all. Wells testified that Jastremski and McNally “denied any involvement or that anything happened, including with respect to their knowledge of Mr. Brady.”²² Wells further testified that Coach Belichick believes Brady’s denials of wrongdoing,²³ and Kraft submitted a declaration supporting Brady’s credibility on this point.²⁴

In addition, Brady testified about each of the purportedly incriminating texts and other communications cited in the Wells Report, explaining one-by-one how they did not relate to ball tampering, and how the various communications between Jastremski and McNally were unknown to him.²⁵ To cite just one example, Brady testified how the Wells Report’s reliance on supposedly incriminating text messages concerning the October 2014 Jets game actually involved referees *over*-inflating footballs to 16 psi—the exact opposite of the deflation behavior claimed by the Wells Report.²⁶ Indeed, it is significant new information that Wells himself *credited* Jastremski’s exchange with his fiancée that the footballs in the October 2014 Jets game *should have been at 13 psi* (Hr’g Tr. 278:10-19) (Wells)—not at some lower or impermissible psi level. That new testimony negates any inference that Brady was “generally aware” of footballs being below the psi minimum.

Brady also supplied new information to refute the only two areas where the Wells Report did not credit his testimony. First, it is new and significant information that the Quarterback petition to change the rule regarding ball preparation in 2006 had *nothing* to do with ball pressure, as evidenced by both the petition itself and the Competition Committee’s approval of the change. NFLPA Ex. 203, Petition; NFL Ex. 95, 2006 Competition Committee notes. The

²² Hr’g Tr. 326:1-5 (Wells). For this reason, the NFLPA and Brady see no need to call them as witnesses. Brady sought to confront his accusers, not those who have already provided exculpatory evidence.

²³ See *id.* at 326:6-11.

²⁴ NFLPA Ex. 168 at 3339.

²⁵ See, e.g., Hr’g Tr. 61:18-63:16; 91:10-96:7; 130:19-131:7; 134:24-135:22; 136:22-138:24; 140:9-141:19 (Brady).

²⁶ See *id.* at 58:2-60:13 (Brady).

Wells Report specifically cited and relied upon this change as a basis for suggesting that Brady knew the permissible psi levels back in 2006 (NFLPA Ex. 7 at 40 n.20) but *nothing* in those documents discusses psi. Second, it is new and significant that—while the Wells Report did not credit Brady’s testimony that he knew McNally by face and not by name—the new evidence fully corroborated Brady’s account: there is not a single record of any email, text, or phone call between them. The only thing “linking” them is that Brady purportedly signed memorabilia for McNally, but Brady testified that he naturally does not know the name of everyone for whom he signs memorabilia, and even Wells found that Brady never provided McNally any year-end gifts or bonuses that would suggest they had any relationship. *Id.* at 88.

Brady also provided new context for the Wells Report’s erroneous treatment of the increased communications with Jastremski following the AFC Championship Game as incriminating. Brady testified that the volume of communications was the unremarkable result of the extraordinary number of balls that had to be prepared for the Super Bowl (*100* game balls)²⁷ and the need to calm Jastremski so he could focus on Super Bowl preparation at a time when he was understandably stressed about the public allegations of ball tampering.²⁸

In sum, the new evidence at the hearing established there is no direct or indirect evidence incriminating Brady—just unfounded assumptions resting on improper inferences of “general awareness,” driven by Brady’s decision to follow his lawyer’s advice and not produce personal and non-incriminating communications.

C. New Evidence That the Exponent Report Is Unreliable

At the threshold, it is telling that even the Wells Report recognizes the unreliability of Exponent’s statistical and scientific work because of heavy reliance on uncertain assumptions:

²⁷ See *id.* at 76:7-78:2 (Brady).

²⁸ See *id.* at 78:17-81:10 (Brady).

In reaching the conclusions set forth in this Report, we are mindful that the analyses performed by our scientific consultants necessarily rely on reasoned assumptions and that varying the applicable assumptions can have a material impact on the ultimate conclusions. We therefore have been careful not to give undue weight to the experimental results[.] . . .²⁹

Wells was correct to put little weight on the Exponent Report; the new evidence at the hearing, however, established that Exponent is entitled to *no* weight at all. For starters, it is now undisputed that on the day of the AFC Championship Game, the League did not have procedures for properly recording air pressure and the many critical factors (such as timing, temperature, and wetness) that influence it. As Vincent testified:

- There were no procedures for testing balls at halftime or after the game, or recording where the balls are tested, the gauge used to conduct the testing, whether the balls were wet or dry, or the timing of the measurements.³⁰
- With respect to the impromptu testing of the Patriots and Colts' balls during halftime, Vincent testified that the officials were not instructed to record necessary information such as the temperature in the room, the exact time and sequence of the halftime measurements, and whether the balls were wet or dry. In fact, there was so much confusion that the preliminary notice of investigation sent to the Patriots was based on inaccurate information about the pressure readings.³¹
- The lack of proper testing protocols stems from the fact that League officials had no understanding of the Ideal Gas Law and the fact that balls would naturally deflate when taken from a warm, dry locker room to a cold, wet field, and that the balls would naturally re-inflate—minute-by-minute—immediately upon returning to the locker room, as influenced by temperature, wetness and other factors.³²

The point is not to criticize the AFC Championship Game officials, but to emphasize that the data analyzed by Exponent ranges from missing to uncertain to wrong.³³ Filling these data gaps with “assumptions” about, *e.g.*, which gauge was used (contrary to Anderson’s best

²⁹ NFLPA Ex. 7 at 13.

³⁰ See Hr’g Tr. 231:13-22; 232:13-233:11; 233:20-234:13 (Vincent); *see also id.* at 314:9-315:3 (Wells).

³¹ See Hr’g Tr. 231:13-237:10 (Vincent).

³² See Hr’g Tr. 231:4-12; 234:14-19; 237:11-15 (Vincent); *see also id.* at 314:17-23 (Wells).

³³ See, *e.g.*, Hr’g Tr. 287:24-289:23; 290:6-16 (Wells) (conceding that there are many unknowns that could impact the application of the Ideal Gas Law and that no one recorded such factors); NFLPA Ex. 8, Exponent Report, at IX, 2, 44 (acknowledging uncertainty regarding the gauge used pregame and the sequence of halftime measurements); *id.* at 46 (“it is unknown when in the Locker Room Period each measurement was made”); *id.* at 8, 12 (relying throughout report on assumption that the readings for the third Colts ball measured at halftime were mistranscribed).

recollection), the sequence of events at halftime (it makes no sense that the Colts' balls were tested anytime other than last, after re-inflation of the Patriots' balls, as halftime ran out), the precise timing of the halftime measurements (guesswork), the comparative wetness of footballs (not recorded and not tested), and indoor and outdoor temperatures (more assumptions),³⁴ is not responsible scientific analysis.³⁵

Exponent's lead investigator, Dr. Caligiuri, acknowledged that Exponent could not and/or did not test for certain key factors due to the absence of reliable information. Most significantly, he *conceded* that the Patriots' balls might have been wetter than the Colts' balls at halftime (given the Patriots' time of possession in the first half), yet *admitted* that Exponent did not test for this possibility.³⁶ The new testimony of Dr. Edward A. Snyder—the Dean of the Yale School of Management—further demonstrated the fatal flaws in Exponent's statistical conclusions. He demonstrated that correcting errors in Exponent's work, and accounting for just a few plausible alternative assumptions, turns the Exponent Report on its head. *First*, he showed that Exponent's statistical analysis of the difference in average pressure drops between the Patriots and Colts' balls—Exponent's “most significant” conclusion based on the halftime data³⁷—disregards the effects of timing, despite Exponent concluding in every other study in its Report that every second mattered at halftime.³⁸ When Dean Snyder and his team merely corrected for time, he presented new evidence that “the results shift from being statistically significant to insignificant. The unexplained difference in difference falls and under plausible assumptions

³⁴ See, e.g., NFLPA Ex. 8 at 2; *id.* at 40; *id.* at 48; NFLPA Ex. 7 at 70 (assumptions regarding the timing of the halftime measurements).

³⁵ As Dean Snyder explained: “[I]t’s important for me as a researched and evaluator of data when I see alternatives, if the findings change, then the results are not reliable. . . . When I evaluate alternative assumptions, their findings change, so the bottom line is their results are simply not reliable.” Hr’g Tr. 158:1-5; 158:14-16 (Snyder).

³⁶ Hr’g Tr. 387:15-23 (Caligiuri); see also *id.* at 382:19-21; 383:23-384:2; 385:9-387-23.

³⁷ NFLPA Ex. 8 at IX.

³⁸ See NFLPA Ex. 192, E. Snyder Slides; Hr’g Tr. 158:22-159:2; 167:11-179:23 (Snyder).

goes to a *de minimis* level.”³⁹ Further adjusting for plausible alternative scenarios—like the Colts’ balls being tested at the very end of halftime, as halftime ran out (explaining why only four balls were tested), and therefore being drier—yielded even more dramatic levels of statistical *insignificance* in the difference of the pressure drops.⁴⁰

Second, Dean Snyder testified that Exponent improperly violated its own standard by drawing inferences from the variability among the halftime pressure readings of Patriots and Colts’ balls despite concluding that this difference was statistically *insignificant*.⁴¹

Third, Dean Snyder established that if the Logo Gauge was used by Referee Anderson to measure the Patriots’ balls pre-game—Paul, Weiss told Exponent “that there remains some uncertainty as to which of the two gauges was used”⁴²—then a proper application of the mathematical formula provided by Exponent (the “Master Gauge conversion”) results in eight of eleven halftime measurements for the Patriots’ balls being *higher* than the bottom end of the expected range (the opposite of Exponent’s conclusion).⁴³

The hearing evidence thus demonstrated that the Exponent Report simply cannot be relied upon as a basis to impose discipline on Brady. It rests on a mountain of assumptions and uncertainty. As the Commissioner knows from the drug program, when proper testing protocols are not followed, discipline cannot be imposed. Here, there were no testing protocols at all. The consequence is the absence of reliable information from which to draw conclusions about whether the Patriots’ balls dropped in pressure because of tampering or natural causes.

³⁹ *Id.* at 179:18-23 (Snyder); *see also id.* at 174:6-176:17 (Snyder).

⁴⁰ *See id.* at 176:11-179:14 (Snyder).

⁴¹ *See* NFLPA Ex. 192; Hr’g Tr. 159:3-9; 180:23-183:9 (Snyder).

⁴² *See* NFLPA Ex. 8 at IX. *See also* NFLPA Ex. 7 at 52 (“[Referee] Anderson’s best recollection is that he used the Logo Gauge”); *id.* at 65 n.36 (noting that the gauge used by Jastremski to set the pressure of the Patriots’ balls pregame has not been located); NFLPA Ex. 128 at 3157 (signed statement regarding the halftime testing of the Patriots’ balls with notations next to Dyrol Prioleau’s readings stating “Belonging to JJ” and “Tested using the red marked Wilson gauge,” implying that Jastremski’s gauge resembles the Logo Gauge).

⁴³ *See* NFLPA Ex. 192; Hr’g Tr. 159:10-17; 183:10-188:24 (Snyder).

IV. THE COMMISSIONER’S IMPROPER DELEGATION OF AUTHORITY

The Commissioner has publicly stated his desire to remove himself from the initial determination of discipline.⁴⁴ Vincent’s discipline letter indicates that, in Brady’s case, the Commissioner did just that.⁴⁵ Such delegation of conduct detrimental authority to Vincent violates Article 46—which grants the authority “exclusively” to the Commissioner, with no right of delegation—and was the first ground for Brady’s appeal.⁴⁶ But the Commissioner declined to compel the production of any related documents or witnesses on this subject and rejected this position *before* Brady could present this point at the hearing. NFLPA Ex. 160 at 3265; Ex. C at 1-2. This legal defect alone requires that the suspension be overturned.

V. BRADY WAS DEPRIVED OF A FUNDAMENTALLY FAIR HEARING

Finally, Brady has been denied a fundamentally fair hearing. Any arbitration award upholding the discipline will be tainted and subject to vacatur for at least the following reasons:

First, there is the Commissioner’s summary denial of Brady’s delegation challenge.

Second, Brady was denied the opportunity to question NFL Executive Vice President Jeff Pash about his role as co-lead investigator with Wells. *See* NFLPA Ex. 159 at 3262-63. The Commissioner refused to make Pash available despite CBA precedent for testimony from League investigators and the fact that Pash edited the Wells Report (*see* Hr’g Tr. 268:10-22 (Wells))—belying any claim that he played no significant role in the investigation.

Third, the NFLPA and Brady were denied access to the Paul, Weiss investigative records on the purported ground they “played no role in the disciplinary decisions; the Wells Report was the basis for those decisions.” Ex. C at 4. But the conclusions in the Wells Report are only as

⁴⁴ *See* <http://nflcommunications.com/2014/12/10/nfl-commissioner-roger-goodell-evp-jeff-pash-league-meeting-press-conference-december-10-2014/>.

⁴⁵ *See* NFLPA Ex. 10, Art. 46 Discipline Letter to T. Brady.

⁴⁶ *See* NFLPA Ex. 11, Notice of Appeal, at 1876.

sound as the facts on which they rest—and Brady was denied access to this critical information even though such investigative files were produced in both *Bounty* and *Rice*. See Hr’g Tr. 320:14-321:14 (Wells). Moreover, denial of the investigative notes was not a two-way street. The NFL was able to draw upon these materials to formulate arguments and question witnesses at the hearing because Paul, Weiss partner Lorin Reisner—who conducted most of the cross-examinations at the hearing and sat at the NFL’s counsel table—worked on the Wells investigation as the lead attorney under Wells and thus obviously had access to all of the Wells investigative files in representing the NFL at the hearing.

Fourth, even though Paul, Weiss announced to the world that it is “independent” of the NFL, Wells testified he considered the NFL his client in connection with the Brady investigation, had assertedly attorney-client communications with the NFL (*i.e.*, gave the NFL legal advice), and Paul, Weiss lawyers showed up as paid counsel for the NFL and as witnesses. Rather than being “independent,” Paul, Weiss’ dual roles call the entire investigative process into question.

Finally, Wells repeatedly testified that he acted as “judge” during the investigation.⁴⁷ Crediting Wells’ view that he was the “judge,” Vincent substituted Wells’ factual findings and credibility determinations for his own, further delegating the Commissioner’s exclusive power to impose discipline for conduct detrimental in clear violation of Article 46.⁴⁸

CONCLUSION

For all the foregoing reasons, and as established at the hearing, Brady’s suspension should be vacated in its entirety.

⁴⁷ See, *e.g.*, Hr’g Tr. 303:3-304:15; 306:3-11 (Wells).

⁴⁸ See Hr’g Tr. 244:19-245:2 (Vincent).

EXHIBIT A

**REPORT TO THE NATIONAL FOOTBALL LEAGUE CONCERNING
ISSUES OF WORKPLACE CONDUCT AT THE MIAMI DOLPHINS**

By: PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Theodore V. Wells, Jr.
Brad S. Karp
Bruce Birenboim
David W. Brown

Date: February 14, 2014

Table of Contents

Introduction.....	1
Background.....	6
Executive Summary.....	9
1. Martin Was Subjected to Persistent Harassing Language	9
2. The Harassment Humiliated Martin and Contributed to His Mental Health Issues	13
3. The Mistreatment of Martin Is Consistent with a Case of Workplace Bullying.....	17
4. Incognito, Jerry and Pouncey Harassed Other Dolphins Personnel	19
5. Repeated Acts of Harassment Contributed to Martin’s Departure	24
6. Martin Did Not Fabricate His Allegations of Harassment	27
7. The Extent to Which the Abuse Resulted from Racial Animus Is Unclear.....	29
8. The Culture of the Dolphins Offensive Line Does Not Excuse the Mistreatment of Martin.....	32
9. Martin’s Friendship with Incognito Does Not Excuse the Abuse	35
10. Martin Never Reported the Abuse to the Dolphins Organization	37
11. The Fine Book Shows that Incognito Knew that the Harassment Affected Martin	39
12. No Malicious Physical Attack of Martin Occurred at a 2012 Christmas Party.....	42
13. Coach Philbin and the Front Office Did Not Know About the Harassment	43
14. The Verbal Abuse Was Contrary to Team Policies.....	47
15. The Dolphins’ Plans To Improve the Team’s Workplace Conduct Policies Are Commendable	49
I. Background.....	51
A. Events Leading to the Appointment of a Special Investigator	51
B. The Scope and Independence of the Investigation	52
C. Interviews Conducted	52
D. Material Reviewed.....	53
E. Expert Consultation	53

F.	Witness Privacy and Other Considerations	54
II.	Factual Summary	56
A.	Relevant Parties	56
	1. Jonathan Martin	56
	2. Richie Incognito.....	59
	3. John Jerry	65
	4. Mike Pouncey	65
	5. The Miami Dolphins Organization	66
B.	The 2012 Season.....	67
	1. Martin’s Arrival at the Dolphins.....	67
	2. Insulting Language Directed at Martin.....	70
	3. Comments Regarding Martin’s Sister	71
	4. The View of Incognito and Others	76
	5. Views of Other Linemen	79
	6. Treatment of Other Linemen	79
	7. Treatment of the Assistant Trainer	83
	8. Alleged Physical Harassment of Martin	85
	9. The Friendship Between Martin and Incognito	88
	10. Martin’s Other Friends on the Dolphins.....	93
	11. Martin’s Performance During the 2012 Season.....	94
C.	The 2013 Off-Season	94
	1. Events of Early January 2013	94
	2. Events of Late January to April 2013	97
	3. The April 6 Voicemail	98
	4. Events of April to May 2013	103
D.	The 2013 Season.....	117
	1. Insulting Language Directed at Martin.....	117
	2. The Continuation of the Friendship between Martin and Incognito	118
	3. The Fine System and the Judas Concept	121
	4. Performance of Martin and the Miami Offensive Line	123
	5. Martin Leaves the Dolphins.....	124
	6. Martin’s Communications with Dolphins Personnel After Leaving the Team	127
	7. Incognito’s Entries in the Fine Book.....	129
	8. Ireland’s Communications with Zuckerman	129
	9. Martin’s Communications with His Teammates after Returning to California	130
	10. Incognito’s Attempted Destruction of the Fine Book.....	134
	11. Turner’s Pressuring of Martin to Defend Incognito	134
	12. The Dolphins’ Response to Martin’s Departure	135
	13. Owner Steve Ross Calls for Change.....	138
	14. Status of Martin and Incognito	139

Conclusion	140
Appendix A.....	141
Appendix B	142

Introduction

Jonathan Martin is a professional football player who began the 2013 season as the starting left tackle for the Miami Dolphins of the National Football League. On Monday, October 28, 2013, midway through the season, Martin abruptly walked out of the Dolphins' practice facility and checked himself into a nearby hospital, requesting psychological treatment. Within days, the press began to report that this 6-foot 5-inch, 312-pound, Stanford-educated, two-time All-American offensive lineman had left the team because some of his teammates had subjected him to persistent bullying, harassment and ridicule. The Dolphins requested that the NFL investigate the allegations of misconduct. The league then commissioned this independent Report.

After a thorough examination of the facts, we conclude that three starters on the Dolphins offensive line, Richie Incognito, John Jerry and Mike Pouncey, engaged in a pattern of harassment directed at not only Martin, but also another young Dolphins offensive lineman, whom we refer to as Player A for confidentiality reasons, and a member of the training staff, whom we refer to as the Assistant Trainer. We find that the Assistant Trainer repeatedly was targeted with racial slurs and other racially derogatory language. Player A frequently was subjected to homophobic name-calling and improper physical touching. Martin was taunted on a persistent basis with sexually explicit remarks about his sister and his mother and at times ridiculed with racial insults and other offensive comments.

In 2013, the Dolphins distributed a workplace conduct policy to all players, and Incognito, Jerry and Pouncey each signed an acknowledgement form stating that he understood the policy and agreed to be bound by it. The policy defines harassment to include "unwelcome contact; jokes, comments and antics; generalizations

and put-downs.” Guided by this policy, it was not difficult to conclude that the Assistant Trainer and Player A were harassed, but the questions raised in Martin’s case were more complex, nuanced and difficult.

As an initial matter, Martin developed an odd but seemingly close friendship with Incognito. Not only did both linemen report that they enjoyed socializing together, the evidence also shows that they often communicated in a vulgar manner. Incognito contends that the conduct about which Martin complains was part of locker room banter meant in good fun and that Martin was a willing and active participant in verbal sparring, never letting on that he was hurt by it. Martin claims that at times he participated in off-color joking with Incognito and others in an attempt to fit in, with the hope of reducing the treatment he found offensive. According to our consulting expert, a psychologist who focuses on matters of workplace conduct, such a reaction is consistent with the behavior of a victim of abusive treatment.

Martin claims that Incognito had a good side he liked and a bad side he loathed, and at times both he and Incognito described their relationship as “bipolar.” For example, in text messages to Incognito and others, Martin referred to Incognito as bipolar—not in a clinical sense, but to express the concept that at times Incognito behaved as his close friend and at other times treated him abusively.

Another complicating factor is that Martin may have been particularly sensitive to insults from his teammates. According to Martin, in middle school and high school he was the victim of bullying, which diminished his self-confidence and self-esteem and contributed to what he self-diagnosed as periodic bouts of depression during his teenage years. Martin claims that the depression he experienced in high school

recurred as a result of mistreatment by his teammates on the Dolphins and that on two occasions in 2013 he even contemplated suicide. (Although in this public Report we discuss certain sensitive personal matters pertaining to Martin, including his history of mental health issues and episodes of suicidal thoughts, we do so with the express permission of Martin and his family.)

To be candid, we struggled with how to evaluate Martin's claims of harassment given his mental health issues, his possible heightened sensitivity to insults and his unusual, "bipolar" friendship with Incognito. Nonetheless, we ultimately concluded that Martin was indeed harassed by Incognito, who can fairly be described as the main instigator, and by Jerry and Pouncey, who tended to follow Incognito's lead.

In reaching this conclusion, we were significantly influenced by multiple factors, including the flagrantly inappropriate treatment of the Assistant Trainer and Player A, which, independent of Martin's claims, reflected a pattern of harassment. Moreover, shortly after Martin left the team, Incognito made a number of telling entries in a notebook used to keep track of "fines" the offensive linemen imposed on each other in their "kangaroo court" (typically for trivial infractions such as arriving late to meetings). Incognito recorded a \$200 fine against himself for "breaking Jmart," awarded another lineman who had been verbally taunted a \$250 bonus for "not cracking first," and wrote down a number of penalties against Martin for acting like a "pussy." The evidence shows, and Incognito did not dispute, that "breaking Jmart" meant causing Martin to have an emotional reaction in response to taunting. Approximately one week after Martin left the team, on November 3, 2013, Incognito wrote nearly identical text messages to Pouncey and another lineman: "They're going to suspend me Please destroy the fine

book first thing in the morning.” We view Incognito’s entries in the fine book about “breaking Jmart” and his attempt to destroy the fine book—which was unsuccessful—as evidence demonstrating his awareness that he had engaged in improper conduct toward Martin.

We reject the assertion by Incognito that Martin has fabricated claims of harassment after the fact. Contemporaneous text messages that Martin sent to his parents and others months before he left the Dolphins—which have never before been made public—corroborate Martin’s account that he was distressed by insults from his teammates and experiencing emotional turmoil because he believed he was “a push over” who was unable to stop the verbal assaults.

Further, Martin’s vulnerabilities do not excuse the harassment that was directed at him. That the same taunts might have bounced off a different person is beside the point. Bullies often pick vulnerable victims, but this makes their conduct more, not less, objectionable.

The evidence establishes that persistent harassment by Incognito, Jerry and Pouncey contributed to Martin’s decision to leave the team. The facts we uncovered do not support the view of Incognito and his teammates that this conduct was all good-natured fun among friends. Nevertheless, although Incognito, Jerry and Pouncey verbally harassed Martin, we find that they did not intend to drive Martin from the team or cause him lasting emotional injury.

Moreover, however offensive much of the conduct discussed in this Report may have been, it appears that the Dolphins’ rules of workplace behavior were not fully appreciated and, with respect to at least some of their actions, Incognito and his

teammates may not have been clearly notified that they were crossing lines that would be enforced by the team with serious sanctions. In fact, many of the issues raised by this investigation appear to be unprecedented. We are unaware of any analogous situation in which anti-harassment policies have been applied to police how NFL teammates communicate and interact with each other.

In short, the treatment of Martin and others in the Miami Dolphins organization at times was offensive and unacceptable in any environment, including the world professional football players inhabit. A young football player who has the skills to play at the highest level, and who also happens to be quiet and reserved, should have the opportunity to pursue a career in the NFL without being subjected to harassment from his teammates.

Martin has expressed a desire to continue his NFL career, and we hope that he will have the opportunity to do so. His brief experience in the league was derailed by harassment from his teammates, and it would be unfortunate if he did not get the chance to resume playing in an environment that will permit him to reach his full potential as a professional athlete.

Background

In the days following Martin’s departure from the team, turmoil ensued within the Dolphins organization, and media reports of bullying elicited vocal and mixed reactions from NFL players, analysts and fans. After learning of the existence of a voicemail message that Incognito had left for Martin months earlier, in which Incognito used a racist slur and made vulgar taunts, the Dolphins suspended Incognito. Shortly thereafter, and at the Dolphins’ request, NFL Commissioner Roger Goodell announced that the league would conduct an independent investigation of Martin’s claims. The NFL retained Theodore V. Wells, Jr., a partner in the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, to “direct an independent investigation into issues of workplace conduct at the Miami Dolphins and prepare a report for the Commissioner, which would be made public.”¹

The purpose of our independent investigation was to determine and to report on what happened. We were not engaged to make judgments about whether the conduct gives rise to legal liability on the part of any person or entity.

Since the Commissioner’s appointment, we have conducted a comprehensive investigation. We received full cooperation from the NFL, the National Football League Players Association (or “NFLPA,” the union that represents NFL players) and the Miami Dolphins. We interviewed every then-current Dolphins player and coach as well as the team’s management, including the owner and Chairman, Stephen Ross, and former General Manager, Jeff Ireland—more than 100 interviews in

¹ In addition to Mr. Wells, the Paul, Weiss team included the following attorneys: Brad S. Karp, Bruce Birenboim, David W. Brown, Maria H. Keane, Kira A. Davis, Moira E. Weinberg, Marques S. Tracy, Harry M. Jacobs and Justin C. Wiley.

total. We met with Martin and Incognito on multiple occasions and at great length. We reviewed thousands of voluntarily produced text messages exchanged between them and others. There were no constraints placed on our work or that were aimed to guide our results—not from the NFL, the NFLPA, the Dolphins or any player. The opinions set forth in the findings and conclusions below and elsewhere in this Report are our own.

This Report begins with an Executive Summary of key findings and conclusions, followed by a comprehensive discussion of the relevant facts. We caution at the outset that the language we describe is extremely vulgar. We have not used euphemisms, or toned down racist, sexually explicit, misogynistic or homophobic references. The actual words must speak for themselves, for they are crucial in understanding how the players and others interacted, and they show why we concluded that some of the behavior of Martin’s teammates exceeded the bounds of common decency, even in an environment that often features profanity and mental and physical intimidation.

We also understand that context matters. We accept that the communications of young, brash, highly competitive football players often are vulgar and aggressive, and that these players never expected their private communications with each other to be made public. We did not approach this assignment expecting to discover behavior that society might anticipate in, say, an accounting firm or a law office. For better or worse, profanity is an accepted fact of life in competitive sports, and professional athletes commonly indulge in conduct inappropriate in other social settings. We also recognize that good-spirited goading often contributes to team bonding.

But limits should exist. Even viewed in context, some of the behavior and language discussed in this Report is inappropriate by any reasonable measure of conduct becoming of a professional athlete—and, based on what he reported, certainly was offensive to Martin.

Executive Summary

Many of the questions raised by Jonathan Martin's departure from the Dolphins are nuanced and complex, but the underlying facts are not subject to great dispute. In our opinion, the factual record supports the following findings:

1. Martin Was Subjected to Persistent Harassing Language

When we interviewed him, Martin said he was most offended by persistent vulgar references to members of his family, with whom he is close. According to Martin, these were not harmless one-off "yo mama" jokes, but cutting comments delivered with the intention to demean. The evidence supports a finding that Incognito, Jerry and Pouncey repeatedly and persistently made graphic, sexually explicit comments about Martin's sister, a medical student whom they had never met. Four fairly typical examples of the types of insults made orally, according to Martin, are:

- We are going to run train on your sister. She loves me. I'm going to fuck her without a condom and cum in her cunt.
- Hey, Jmart's sister is in town. Get the plastic sheets ready, she's a squirter.
- I'm going to bang the shit out of her and spit on her and treat her like shit.
- Hear your sister has a wolf-puss. A fat, hairy pussy.

Although Martin's core complaints primarily relate to oral statements, crude references to his sister also appeared in a handful of text messages, including one that Incognito sent to Martin and other offensive linemen:

I flew jmart's sister into Indy. My dick is dry and needs some of her healing squirt juices²

Martin said that he was particularly offended by these crude comments about his sister and that his transparent discomfort only increased the frequency and intensity of the insults. Martin also recalled that the comments about his sister were sometimes accompanied by obscene physical gestures. For example, he claimed that on the practice field, Incognito, Jerry and Pouncey would call his sister a "squirter" and then squirt water onto the field from their water bottles, and that while engaged in certain warm-up stretching exercises, they would simulate having sex with his sister. The evidence confirmed these allegations.

Making matters worse, from Martin's perspective, the disparagement of his sister sometimes occurred in front of other players, in the showers or on the team airplane, in what he believed to be an effort to humiliate him. After Martin's mother attended a team event in April 2013, Incognito, Jerry and Pouncey began mocking Martin with similar sexually explicit jeers about her, too. For example, Martin claimed that Jerry at one point said he wanted to have sex with Martin's sister and his mother at the same time.

In addition, Incognito subjected Martin to racial insults. On April 6, 2013, Incognito left the following voicemail message for Martin:

Hey, wassup, you half-nigger piece of shit. I saw you on Twitter, you been training 10 weeks. I'll shit in your fuckin' mouth. I'm gonna slap your fuckin' mouth, I'm gonna slap your real mother across the face [laughter]. Fuck you, you're still a rookie. I'll kill you.

² Unless indicated otherwise, all text messages appear as in the original communication; with a few exceptions, we have not modified typographical errors, apparent autocorrect errors or abbreviations found in the original text messages.

Martin was appalled by this message. He said that Incognito had never before called him a “nigger.” And although Martin did not regard statements such as “I’ll kill you” as literal threats, the voicemail further distressed him because he feared that it signaled that the abuse he had endured during his rookie season would continue during his second season. According to Martin, a few weeks later, prior to a dinner at a Fort Lauderdale restaurant, Incognito addressed him in a text message as “shine box,” which Martin felt was a derogatory term, and he responded with a message complaining about Incognito’s “racist shit.” At the dinner, Martin claimed, Incognito made additional offensive racial comments to him (although he said he laughed them off at the time). The comments, Martin said, included jokes about slavery, and he claimed that Incognito called him a “nigger” to his face at the restaurant. Incognito also insulted Martin in person and in text messages with other racially charged language, including referring to Martin as a “liberal mulatto bitch,” “stinky Pakistani,” “shine box” and “darkness.”

In addition, Jerry and Pouncey sometimes taunted Martin by accusing him of not being “black enough.” Martin believed that these comments were made to deride his upper-middle-class upbringing, reserved nature and intellectual interests.

In the 2013 season, Incognito began openly, at various times, to refer to Martin in the locker room and on the practice field as “my bitch” or the “O-line’s bitch.” Martin was insulted to be called another player’s bitch, and he believed that Incognito was invoking terminology commonly used in prisons to refer to an inmate who is under the control and protection of a dominant inmate. In one instance, Martin claimed Incognito came to his defense in a fight with a defensive lineman in a scrimmage, but then immediately following the altercation began to say to Martin in a demeaning tone,

both on the field and in the locker room, in the presence of other teammates, “you’re my bitch.”

The “you’re my bitch” comments added to name-calling that had begun in 2012, Martin’s rookie season, when Incognito, Jerry and Pouncey began regularly calling Martin a “cunt,” a “bitch,” a “pussy” and a “faggot.” Martin was not surprised to hear these words used by football players, but believed they were frequently hurled at him with demeaning intent. The evidence shows that these words—at least at times—were spoken to Martin in a cutting tone or with the intent to humiliate him. According to Martin, these types of taunts were a routine part of his life with the Dolphins.

For the most part, Incognito does not dispute saying or writing any of the statements that Martin claimed offended him. Further, Incognito admitted that at times the very purpose of the verbal taunts was to “get under the skin” of another person. From Incognito’s perspective, however, the statements in question were an accepted part of the everyday camaraderie of the Dolphins tight-knit offensive line. Incognito told us that Martin (and other offensive linemen) all recognized, accepted and, indeed, actively participated in “go-for-the-jugular” teasing, and that vulgarity and graphic sexual comments were not only a staple of their locker-room culture but also helped them bond. In contrast, Jerry downplayed his role in making vulgar comments about Martin’s family, and Pouncey denied making or hearing any such remarks. We do not find Jerry and Pouncey credible on these points, largely because both Martin and Incognito, plus other witnesses, agree that these words were in fact said to Martin.

Ultimately, there is little question that Incognito, Jerry and Pouncey persistently made insulting and derogatory comments about Martin and his family

members. Nor is there any dispute that Incognito called Martin a “nigger,” his “bitch” or a “stinky Pakistani.” As set forth in the next finding, the evidence shows that Martin was humiliated by these insults and was not a willing participant in the verbal taunting.

2. The Harassment Humiliated Martin and Contributed to His Mental Health Issues

Although Martin claimed that he occasionally asked Incognito, Jerry and Pouncey to stop making crude remarks about his mother and sister, Martin acknowledged that he typically did not challenge language he found hurtful; instead, he often turned or walked away or attempted to use body language to convey his disapproval, or just tried to laugh it off. Martin also asserted that he befriended Incognito, Jerry and Pouncey in an effort to reduce their abuse and that he sometimes participated in their vulgar banter in an effort to fit in.

The evidence shows that Martin was distressed by his teammates’ language, but attempted to hide his pain, believing that he was too sensitive and that the barbs would stop after his rookie year. We will never know whether a stronger reaction by Martin would have stopped his teammates’ behavior or exacerbated it. But Martin told us that he did not view a physical response as a viable option. Martin was a rookie when the verbal abuse began in 2012, and he was not going to begin his professional football career by trying to punch out Incognito, one of the leaders of the offensive line, who had Jerry and Pouncey backing him up. Indeed, Martin believed that trying to engage in a physical confrontation with these three—whom he viewed as a united group—would only make matters worse.

Martin came to view his failure to stand up to his teammates as a personal shortcoming. According to Martin, the mistreatment by his teammates and his inability to make them stop the insults drove him into depression and led him to contemplate

suicide on two occasions in 2013. Martin noted that in his four preceding years at Stanford, before he arrived at the Dolphins, he had no significant issues with depression and experienced no suicidal thoughts.

Martin's contemporaneous text messages to his parents, sent months before he left the team, support the view that the actions of Incognito, Jerry and Pouncey contributed to Martin's emotional distress, though these messages also highlight that he was struggling with other personal issues as well, some of them going back to high school. These text messages also corroborate Martin's claims that he viewed his teammates' taunting as unwanted and that he was distraught over his failure to challenge them. His parents' worried responses show that they recognized that their son was experiencing significant psychological turmoil.

On April 22, 2013, Martin wrote to his mother:

I figured out a major source of my anxiety. I'm a push over, a people pleaser. I avoid confrontation whenever I can, I always want everyone to like me. I let people talk about me, say anything to my face, and I just take it, laugh it off, even when I know they are intentionally trying to disrespect me. I mostly blame the soft schools I went to, which fostered within me a feeling that I'm a huge pussy, as I never got into fights. I used to get verbally bullied every day in middle school and high school, by kids that are half my size. I would never fight back, just get sad & feel like no one wanted to be my friend, when in fact I was just being socially awkward. Most people in that situation are witty & quick with sarcastic replies, I never have been. I'm awkward around people a lot of the time because I simply don't know how to act around them . . .

Shortly thereafter, Martin's mother responded:

My first thought is that I am glad you wrote this down as a way to start figuring it out. There are people in the world with their own insecurities and they tend to be bullies and confront people. Dealing with them can be a challenge. I think when you feel really good about yourself they won't

bother you as much because you won't let them define you. This fits into wanting to please and be liked. Some people out there are not worth it. We do live in a bubble. Financial and

professional success is sheltering. Which is both good and bad. I think the NFL has a disproportionate share of people who are obscure but masking it with aggression. Your profession is really difficult with measurement and evaluation every week. So we need to build up you liking you. This is where some professional help would be good. They can help you structure your thoughts. And that whole brain chemistry thing is real. You may need some additional serotonin. . . .

Martin, however, seemed unconvinced that his mother's suggested solutions would be sufficient to alleviate his anguish. The same day, he wrote to her:

I care about my legacy as a professional athlete. But I'm miserable currently. A therapist & medication won't help me gain the respect of my teammates. I really don't know what to do Mom

On April 29, 2013, Martin sent the following message to his father, which included a reference to the dinner in Fort Lauderdale where Martin says Incognito had called him a "nigger" and a complaint about insults concerning his sister:

People call me a Nigger to my face. Happened 2 days ago. And I laughed it off. Because I am too nice of a person. They say terrible things about my sister. I don't do anything. I suppose it's white private school conditioning, turning the other cheek

Martin's father responded:

They think nigger is okay because black people use it. Tell them you don't use it and it is never okay and if they do it again then they can kiss your black ass. Likewise say that your sister is a Madonna. If they say it again they can kiss your ass. If they do say either again then just stare at them give them and give them your finger.

Just so you know, I punked out many times including over nigger. Also over just being black. Not proud of it in the least. It is just a matter of understanding your own strength.

Had 3 white boys outside of a bowling alley calling me nigger. I backed down.

Had a Harvard asshole talk about my suntan. I backed down. Just stay who you are.

Also, I learned how to pop a bully in his mouth and kicked one in his balls.

On May 5, after feeling humiliated by Incognito and Pouncey during a yacht trip, Martin sent his mother these messages:

I'm never gonna change. I got punked again today. Like a little bitch. And I never do anything about it.

I was sobbing in a rented yacht bathroom earlier

Whether or not Incognito, Jerry and Pouncey fully appreciated the effect of their actions on Martin, there is no doubt that, from Martin's perspective, their actions were abusive and hurtful. We are not, however, in a position to evaluate Martin's assertion that the abusive conduct of his teammates was, in fact, the exclusive triggering cause of his depression and contemplation of suicide. We lack the factual information necessary to conduct a comprehensive analysis of Martin's mental health issues and their root causes. In addition, we advised Martin's counsel that, given Martin's ongoing mental health counseling and the NFL's intention to make this Report public within a few months, it was not practical for us to try to unravel the specific triggering causes of Martin's onset of depression and suicidal thoughts.

We can say that there is a temporal relationship between the abusive conduct and the onset of the serious depression that Martin reported. According to Martin, these mental health issues did not surface at Stanford, but re-emerged only after

he joined the Dolphins. Nevertheless, we also saw evidence that Martin was troubled not only by the harassment from his teammates, but also by other issues, including concerns about his on-field performance. Perhaps the depression was triggered in part by the new pressures of moving from college to the professional level. Ultimately, we believe that sufficient evidence exists to support a finding that the abusive conduct by Incognito, Jerry and Pouncey was at least a contributing factor to Martin's emotional distress.

3. The Mistreatment of Martin Is Consistent with a Case of Workplace Bullying

We find that the harassment of Martin bears many hallmarks of a classic case of bullying, where persons who are in a position of power harass the less powerful. It may seem odd to some that Martin, a professional football player with imposing physical stature, could be described as a victim of bullying or harassment, but even big, strong athletes are not immune from vulnerability to abusive behavior.

The relevant literature on bullying indicates that bullies typically choose victims who are different from them, who have low self-esteem or who lack the skills to deal with conflict.³ A typical victim is a person who is unlikely to push back when victimized. Studies show that bullying adversely affects the target's physical and mental health—it has been shown to lead to depression, stress, anxiety, mood swings and suicide. Researchers also have found that bullying causes decreased job satisfaction and increased intentions to leave one's job. And several studies explain that targets of bullying may not report the bullying out of fear that their employers will not support them or that reporting the harassment will leave them worse off.

³ In Appendix A, we provide a list of articles about bullying on which we primarily relied in preparing this Report. We note that there is no law against workplace bullying (outside of schools) in any state. Since 2003, laws that would have prohibited such conduct have been introduced in at least twenty-five state legislatures; to date, however, none has been enacted.

The mistreatment of Martin fits, to some extent, the classic pattern for workplace bullying. Incognito, Jerry and Pouncey were in superior positions to Martin within the Dolphins organization; he was a rookie in 2012. They appear to have regarded Martin and the others they mistreated as different, weaker or unlikely to fight back, and deliberately subjected them to aggression over a significant period of time, including abusive language uttered in a manner calculated to lead to humiliation in front of others. In a number of ways, Martin fits the mold of a typical bullying victim: hesitant to challenge others, perhaps socially awkward (at least in his own eyes) and different from the others because of his upper-middle-class upbringing and intellectual interests. He responded to abuse by blaming and distrusting himself, falling into what appears to have been serious depression. He did not report the harassment because he feared that doing so would further ostracize him from the offensive line group.

According to our consulting psychologist, William H. Berman, Ph.D., an expert in matters relating to workplace dynamics, interaction and culture and interpersonal dysfunction within workplace relationships, this factual scenario is consistent with a case of an abusive workplace relationship. Nevertheless, based on the entire record that we reviewed, we are not prepared to reduce these events to a simple or paradigmatic case of bullying. It is more ambiguous and complicated, because, purportedly in an effort to deal with the bullying, Martin developed a curious but seemingly close friendship with Incognito, his alleged primary harasser. Yet, while there is no doubt that Martin at times enjoyed socializing with Incognito, his efforts to befriend Incognito also is consistent with the reaction of a person who is trapped in an abusive situation. As Dr. Berman explained, attempting to develop a close friendship with an

abusive person is a common coping mechanism exhibited by victims of abusive relationships.

4. Incognito, Jerry and Pouncey Harassed Other Dolphins Personnel

Martin was not the only one subjected to hurtful treatment. Incognito, Jerry and Pouncey routinely mocked and demeaned other Dolphins players and personnel.

Player A

Player A was a Dolphins offensive lineman. Like Martin, he is quiet and unassuming. During his time with the team, Incognito, Jerry and Pouncey frequently taunted Player A with homophobic insults. He often was called a “fag” or a “faggot” in a demeaning tone. Incognito reportedly accused him of “sucking dick” and “pissing while sitting down” and asked him “where’s your boyfriend?” Incognito acknowledged that Player A, although not actually believed to be gay, was spoken to in this manner repeatedly and persistently—he got it “every day from everybody, high frequency.”

In addition, Incognito and others acknowledged that Player A was routinely touched by Incognito, Jerry and Pouncey in a mockingly suggestive manner, including on his rear end, while being taunted about his supposed homosexuality. Incognito specifically admitted that he would grab Player A and ask for a hug as part of this “joke.”

Martin said that on one particularly disturbing occasion, Pouncey physically restrained Player A, and, in full view of other players, jokingly told Jerry to “come get some pussy,” and that Jerry responded by touching Player A’s buttocks in a way that simulated anal penetration. Jerry and Pouncey both denied this allegation.

Given the seriousness of this allegation and the conflicting recollections, we decline to make any findings about this particular alleged incident.

Dolphins' Offensive Line Coach Jim Turner was aware of the running "joke" that Player A was gay, and on at least one occasion, he participated in the taunting. Around Christmas 2012, Coach Turner gave the offensive linemen gift bags that included a variety of stocking stuffers. The gifts included inflatable female dolls for all of the offensive linemen except Player A, who received a male "blow-up" doll. Martin and another player reported that they were surprised Coach Turner did this; Martin further said that he was offended that Turner had endorsed the humiliating treatment of Player A by participating in it. Incognito and others agreed that this incident with Coach Turner occurred. When interviewed, Turner was asked if he gave Player A a male blow-up doll. He replied, "I can't remember." We do not believe that Turner forgot this incident, which many others recalled.

Incognito's view of Player A's treatment echoed what he said about Martin's treatment—that it was all part of the rough and tumble but ultimately good-natured environment of the Dolphins' offensive line. According to Incognito, Player A was a "good kid" who "took it well" and never told his teammates to stop. In Incognito's eyes, jokes about Player A's sexuality were all harmless fun.

Further, Incognito attempted to show that the treatment of Player A was light-hearted and inoffensive by claiming that Martin himself joined in it, including by coming up with the nickname "Loose Booty" for Player A. Incognito also pointed out that Martin sent him a joking text message that stated that Martin would give Player A "bath salts & lock him in your house with a tranquilizer gun & a box of sandpaper

condoms.” Incognito conceded, however, that Martin did not join in the touching of Player A that sometimes accompanied the homophobic insults.

Martin admitted that he sent text messages to Incognito alluding to the “joke” that Player A was gay, but noted that as a general practice he did not make such remarks to Player A, evidently because he recognized that doing so might hurt Player A’s feelings. We are unable to determine whether Martin said such things in Player A’s presence, but ultimately we do not believe that Martin intended to harass or embarrass Player A; in fact, Martin may also have been trying, however awkwardly, to fit in. Although Martin’s participation in homophobic jokes about Player A does lend credence to Incognito’s view that these comments were not meant to cause real injury, any such inappropriate teasing by Martin does not, in our view, excuse the conduct of Incognito, Jerry or Pouncey. More important, the evidence indicates that Martin was not viewed as one of Player A’s tormentors.

The evidence further shows that Player A regarded the persistent insults and mocking physical contact as unwelcome. In our view, these incidents cannot be viewed in isolation. They are part of a pattern of abusive, unprofessional behavior that ultimately undermined the offensive line and hurt the entire team.

Just as the racial taunting of Martin is inexcusable, so, too, is the taunting of Player A on the basis of sexual orientation, regardless of whether or not he is, in fact, gay. Several NFL players have been vocal in promoting acceptance and integration of gay players into the league, and we believe that the NFL as an organization is committed to creating a safe environment in which a player can feel comfortable being open about his sexual orientation. With the recent announcement by Michael Sam, a defensive

lineman from the University of Missouri who is expected to be selected in the 2014 NFL draft, that he is gay, it is even more urgent that a tolerant atmosphere exist throughout the league. The frequent use of homophobic insults undermines this goal.

The Assistant Trainer

We found that the Assistant Trainer, who was born in Japan, was the target of frequent and persistent harassment, including insults relating to his race and national origin. Incognito, Jerry and Pouncey admitted that they directed racially derogatory words toward him, including “Jap” and “Chinaman.” At times, according to Martin, they referred to the Assistant Trainer as a “dirty communist” or a “North Korean,” made demands such as “give me some water you fucking chink,” spoke to him in a phony, mocking Asian accent, including asking for “rubby rubby sucky sucky,” and called his mother a “rub and tug masseuse.” Martin and others informed us that Incognito and Jerry taunted the Assistant Trainer with jokes about having sex with his girlfriend. Incognito admitted that these types of comments were made to the Assistant Trainer.

On December 7, 2012, the anniversary of the Japanese attack on Pearl Harbor, Incognito, Jerry and Pouncey donned traditional Japanese headbands that featured a rising sun emblem (which the Assistant Trainer had given them) and jokingly threatened to harm the Assistant Trainer physically in retaliation for the Pearl Harbor attack. According to Martin, the Assistant Trainer confided in him that he was upset about the Pearl Harbor comments, finding them derogatory toward his heritage.

Martin and another player we interviewed both believed that the Assistant Trainer awkwardly laughed along with some of the racial insults, even though he was in

fact offended. And both players seemed offended by the flagrant racial harassment of the Assistant Trainer. In a text message sent on November 4, 2013, Martin told a friend: “I always felt so bad for [the Assistant Trainer] . . . it was really racist.” Martin claims that a number of Dolphins employees saw how the Assistant Trainer was humiliated but did not intervene, including his supervisor, head trainer Kevin O’Neill, who allegedly even laughed at some of the racial insults. As far as we know, none of the players, including Martin, confronted Incognito, Jerry or Pouncey about the racist comments directed at the Assistant Trainer or demanded that they cease.

When interviewed about these matters, the Assistant Trainer initially pleaded that he not be required to answer certain questions, implying that he could not be forthright because he was concerned about losing the trust of the players. The Assistant Trainer further claimed that Incognito was his friend and asserted that Incognito had never offended him. He told us that he could not recall if Incognito had called him a “Chinaman” or a “Jap,” and refused to answer the question whether Incognito had said anything about his girlfriend, saying that the inquiry made him “very uncomfortable.”

We did not find the Assistant Trainer’s denials believable. Notably, hours after Martin left the team on October 28, the Assistant Trainer sent him a text message indicating that he had indeed been personally offended by the insults directed at him by Incognito, Jerry and Pouncey: “Hey JM I understand how [y]ou feel man... They are *relentless sometime.... Some day I wanna do exactly what you did today.*” (emphasis added and ellipses in original). The ceaseless racial ridicule directed at the Assistant Trainer was appalling and plainly over the line in any workplace.

We also find the treatment of the Assistant Trainer particularly troubling because he was not a fellow football player, but a subordinate, a member of the training staff. In our view, it is likely that the Assistant Trainer felt that he had no standing or ability to fight back, and feared the loss of his job if he protested and the players did not take kindly to his complaints. Again, as with Player A, we view the treatment of the Assistant Trainer as part of a pattern of abusive, unprofessional behavior.

5. Repeated Acts of Harassment Contributed to Martin's Departure

We believe that Martin was subjected to persistent verbal abuse, and we expressly find that the abuse contributed to his decision to leave the Dolphins on October 28, 2013, though it was not necessarily the only cause.

Although media reports have focused only on Martin's response to a juvenile cafeteria prank (in which his teammates all got up from a table at dinner as he approached), Martin told us that he had been mocked throughout the day before he left, including with racially derogatory language, and that these taunts, in addition to the cafeteria prank, caused him to boil over. He claimed that in a meeting room early in the day, he heard taunts from Incognito that included "stinky Pakistani," which made him "almost fed up."

Later, when Martin arrived in the cafeteria for dinner around 6 pm, most of the offensive linemen, including Incognito, were already sitting together at a table. The evidence shows that while Martin was waiting in line for food, Incognito called out to him from the table, saying that Martin was a "stinky Pakistani" who should not join the group. According to Martin, a fellow player standing near him in line overheard the comment and said "get them off your back." Martin said that this episode further demonstrated to him that his teammates witnessed how he was routinely demeaned by the

rest of the offensive line and observed that he was not standing up for himself, and he promised himself that if the linemen did one more thing, he would leave. Moments later, at Incognito's urging, all of the linemen sitting at the table got up and walked away when Martin arrived. For Martin, the cafeteria incident was the last straw. He slammed his tray of food on the floor and left the Dolphins facility.

By Martin's account, that decision was a reaction to all of the harassment he had endured since 2012, and the immediate catalyst for his departure was not just the prank reported in the press, but also the racially charged taunts—"stinky Pakistani"—that he had heard that day. Incognito admits that he called Martin a "stinky Pakistani" or something similar on October 28 in the cafeteria, in front of other players.

Incognito claims, however, that Martin manufactured allegations that he was hurt by verbal harassment to cover up an impulsive decision to flee from football. According to Incognito, Martin's departure from the Dolphins should be attributed to pre-existing mental health problems, alcohol and drug use and/or concerns about poor performance on the field. Martin has candidly acknowledged wrestling with all of these issues, and his text messages and other evidence demonstrate that these are real factors, not issues Incognito has manufactured out of whole cloth.

As discussed above, Martin reported experiencing mental health problems going back to high school, and he has struggled with issues of self-confidence, self-image and social integration since that time. In particular, Martin's passive responses to the conduct of Incognito, Jerry and Pouncey painfully reminded him of his failures to challenge bullies in his youth, and he may have been particularly sensitive to insults. In addition, Incognito alleged that Martin at times abused alcohol and recreational drugs,

particularly after bad games.⁴ Incognito pointed out, for example, that following a poor performance in the Dolphins' October 6, 2013 game against the Baltimore Ravens, Martin got extremely intoxicated and missed a morning weightlifting session. Martin admitted that Incognito's account of this incident was accurate. Further, Martin acknowledged struggling with insecurities about his performance on the offensive line. For instance, as Incognito claims, Martin was disheartened in reaction to his poor play in a game against the New England Patriots at the end of the 2012 season, and unhappy about not playing well in games preceding his abrupt departure in 2013. Incognito also alleged that Martin was upset because in mid-October the Dolphins acquired left tackle Bryant McKinnie from the Baltimore Ravens and moved Martin to right tackle, which could be viewed as a demotion, although Martin claimed he took this move in stride.

After considering all of Incognito's arguments and weighing all of the evidence, we conclude that there is ample corroboration for Martin's statements that he was distraught over harassment from his teammates. In particular, Martin's claims are substantiated by his contemporaneous text messages to his mother and father. We reject the notion that Martin simply "walked off the job" for reasons entirely unrelated to persistent insults. Even though his decision to leave the team and check himself into a hospital undoubtedly seems erratic, we do not believe that Martin simply "cracked" under the pressure of playing in the NFL.

Although some have questioned Martin's toughness, he started every game during his time in the NFL—sixteen starts as a rookie and seven in 2013 before he

⁴ Although we uncovered information relating to alleged drug use in this investigation, further inquiries into these matters are beyond the scope of our mandate, and the determination of any consequences for such activities is left to the league.

left the team. Jim Harbaugh, Martin's former head coach at Stanford and the current head coach of the San Francisco 49ers, told us that he had never doubted Martin's tenacity, work ethic and dedication to the game, and that he had never seen Martin exhibit problems with social adjustment. Coach Harbaugh told us he believed that Martin likely could continue to have a successful career in the NFL. It appears that Martin was up to the challenge of dealing with physical or verbal intimidation by opposing players during NFL games, but fell victim, at least in part, to persistent taunting from his own teammates.

Equally important, although we find that Martin left the team due in part to the verbal abuse directed at him, we also find that Incognito, Jerry and Pouncey did not intend to cause Martin to leave the Dolphins or inflict lasting emotional injury. Martin was a starting tackle on the Dolphins offensive line, so inducing him to leave the team would be harmful to his teammates' competitive prospects, and they undoubtedly wanted to win. Plainly, Incognito, Jerry and Pouncey intended to get under Martin's skin, and they certainly appear to have been insensitive to the significant emotional pain they were causing. But we do not believe that they deliberately were trying to goad Martin into taking drastic action, such as leaving the team. They likely expected him, and the others who bore the brunt of their verbal assaults, simply to continue to take it.

6. Martin Did Not Fabricate His Allegations of Harassment

We also evaluated Incognito's suggestion that text messages Martin sent to Incognito on November 1, 2013, a few days after he left the Dolphins, show that Martin was not mistreated by Incognito and that he has contrived his allegations of harassment. These messages include the following:

Incognito: How u doing buddy? Feeling better?? I miss us

Martin: Wassup man? The worlds gone crazy lol I'm good tho
congrats on the win

Incognito: Thanks dudeIt's unbelievable all the attention this is
getting. All that's important is that you feel better and
know we miss u dude

Martin: Yeah I'm good man. It's insane bro but just know I don't
blame you guys at all it's just the culture around football
and the locker room got to me a little.

We confronted Martin with these text messages, noting that his "I don't
blame you guys at all" statement seemed to undercut his core allegation that he felt
abused by his teammates. Martin responded that when he sent these messages to
Incognito, he truly believed that Incognito was one of the players who had driven him
from the team, but at the time, he blamed himself for leaving, feeling that he was simply
too sensitive and that he was at fault for not stopping the abusive behavior. Martin told
us, too, that he has received counseling since that time and has come to the view that he
should not feel guilty or blame himself if ridiculed.

In analyzing this issue, we also considered Incognito's view that these text
messages demonstrate that Incognito did not engage in inappropriate behavior toward
Martin and in fact cared about him. And we also took into account Martin's argument
(discussed below in Section II.D.9) that Incognito sent him these ostensibly
compassionate messages to manipulate him into responding in a friendly manner, with
the intention of immediately leaking his replies to a reporter. For his part, Incognito
admitted to giving Martin's messages to the reporter but denied any improper intent.

At the end of the day, we credit Martin's explanations for why he did not,
in his November 1st text messages to Incognito, say that he believed his teammates were
at fault for harassing him. Dr. Berman informed us that Martin's outwardly conciliatory

responses are consistent with the reaction of a victim of abusive conduct and cautioned that these responses should not lead to the conclusion that Martin has fabricated allegations of harassment. In fact, according to Dr. Berman, blaming one's self for being too sensitive and not stopping abuse is often a manifestation of depression. But that is not the only reason why we credit Martin's account. As discussed above, the contemporaneous text messages between Martin and his parents show that he has not fabricated after-the-fact excuses for his departure from the team, and that he was indeed hurt by his teammates' conduct.

7. The Extent to Which the Abuse Resulted from Racial Animus Is Unclear

The role of race in this matter was difficult to resolve. Martin told us that he believes that Incognito harassed him in part because Incognito was motivated by racial animus. Incognito claimed that he was never so motivated and that his language must be evaluated in the context of his unique friendship with Martin. We find the evidence on this question ambiguous and conflicting, and we decline to make a finding either way.

As noted above, Incognito referred to Martin as a "half-nigger piece of shit" in his April 6, 2013 voicemail, and Martin says Incognito called him a "nigger" on at least one other occasion. And it is undisputed that Incognito routinely used other racially derogatory language (including, for example, "mulatto," "dirty Pakistani" and "darkness" to Martin, and "Chinaman" and "Jap" to the Assistant Trainer).

In a nationally televised interview, Incognito conceded: "In no way, shape or form is it ever acceptable for me to use that word [nigger] even if it's friend to friend on a voicemail." At the same time, Incognito claimed that he never used racially derogatory words with animus; that his use of the word "nigger" in his April 6 voicemail message should be understood in the context of his relationship with Martin and the way

they typically communicated (which admittedly would shock outsiders); that he and Martin previously had used the word “nigga” (which Incognito claimed was different from “nigger”) and discussed its social meaning in private conversations; and that they were close enough to joke around in this manner. Incognito also argued that Martin did not communicate to him that he was offended by racially charged statements, and this assertion, for the most part, appears to be accurate; Martin conceded that he typically “laughed off” or ignored such remarks, even when he was deeply offended.

In addition, to be fair, the use of the word “nigger” was not the dominant or defining characteristic of the conduct to which Martin objected. Incognito’s use of this epithet to Martin appears to have been sporadic; Martin recalled only two such occasions, and the factual record does not suggest otherwise. We also found it relevant that Incognito established what appear to be close friendships with black teammates, and that many of them passionately defended Incognito in the wake of his suspension—in media reports and in our interviews—even after it had become well-known that Incognito had addressed Martin as a “half-nigger piece of shit.”

Martin, by contrast, denied ever giving Incognito license to call him a “nigger,” and also denied having the private conversations that Incognito reported. His statements were corroborated to some extent by his text messages to his father expressing distress that he had been called a “[n]igger to [his] face.” Further, Incognito admitted that he used the word “nigger” in an attempt to “shock [his] buddy,” which itself demonstrates a certain awareness that he knew he was crossing a line. On balance, we credit Martin’s view, and reject the notion that Martin invited or welcomed Incognito’s

use of racial slurs. We find that Incognito knew or should have known that calling Martin a “nigger” was well out of bounds.

But the issue of whether Incognito’s ultimate motivation for his persistent harassment of Martin was in part racial animus is complicated by the fact that John Jerry (who is black) and Mike Pouncey (who is bi-racial) often joined Incognito in the abusive behavior. Presumably, they would not have followed Incognito’s lead if they thought he had selected Martin for abuse out of racial animus. It also is significant that Incognito, Jerry and Pouncey subjected a number of other linemen to harsh treatment. Most are black, but at least one is white (Nate Garner). Indeed, many players thought Garner was treated the worst. This suggests that Incognito, Jerry and Pouncey were equal-opportunity harassers. Further complicating this issue are reports (from both Incognito and Martin) that Jerry and Pouncey on occasion accused Martin of not acting “black enough”—statements that seem to reflect a problematic attitude toward racial identity and socio-economic differences and that reinforce crude racial stereotypes (although they do not seem to demonstrate racial animus).

Finally, when considering racial animus, certain of Incognito’s text messages that do not relate directly to Martin are relevant to assessing his racial attitudes. Specifically, on December 13, 2012, Incognito and a former Dolphins offensive lineman, who is white, communicated about purchasing guns, apparently for recreational purposes. (We identify this former Dolphin as Player B.) The discussion veered into jokes about shooting black people:

Player B: Especially if u plan living in Arizona in the future, that’s exactly what you want

Incognito: Yea. For picking off zombies

Player B: Lol isn't that why we own any weapons!?

Incognito: That and black people

Player B: Mmm def all black ppl

Four days later, Incognito and Player B discussed rifle scopes in text messages.

Player B: Yes. That's a solid optic made specifically for a .308 battle rifle

Incognito: Perfect for shooting black people

Player B: Lol exactly

Player B: Or Jeff Ireland

We accept that these messages are nothing more than thoughtless banter, with no underlying malicious intent. But such jokes are nonetheless reprehensible and arguably reflect deep-seated racial hostility.

In sum, while there is no question that Incognito made offensive racial comments to Martin and others, and displayed a troubling insensitivity to racial issues in general, the evidence is sufficiently muddled and conflicting that we decline to make a finding on whether Incognito's conduct toward Martin, considered in full, was necessarily motivated by racial animus.

8. The Culture of the Dolphins Offensive Line Does Not Excuse the Mistreatment of Martin

Incognito and most of the other offensive linemen claimed that the treatment of Martin and others was all in good fun, part of everyday joking and brotherly bonding that was a known and accepted part of life on the Dolphins, at least on the offensive line. A few offensive linemen, however, said that Martin was bothered, especially by the taunts about his sister, and did not view them as part of good fun. Here,

we credit the minority view rather than the majority opinion and find it a more accurate depiction of the facts. Corroborating our finding are Incognito's frank admissions that the goal of the vulgar taunting was to "get under the skin" of other players and that Martin sometimes appeared disturbed when his sister was insulted. Moreover, Incognito and other linemen joked about who among their teammates would "break first" in response to verbal taunting—further evidence that they knew their words might cause emotional distress.

Another justification that Incognito offered was that the Dolphins offensive linemen routinely communicated and behaved in a profane manner, such that the line defining what amounted to unacceptable or hurtful insults may have become blurred. The offensive line's group text messages lend significant support to this view: they are peppered with gutter humor, both in words and images. One of the photos shared with the group by text message shows Incognito, surrounded by other laughing linemen (including Martin), holding his penis near the ear of a sleeping or unconscious teammate; another photo, taken by Incognito and also circulated to the group, features Incognito's own excrement. In an environment where this sort of outlandish behavior was commonplace, Incognito argues, virtually nothing was "off limits," and trying to label particular insulting comments as improper is impossible and unfair.

Ultimately, however, while the freewheeling, "anything goes" atmosphere characterized much of the Dolphins offensive line culture may be a factor in explaining what happened to Martin, it does not justify it. Incognito was a leader on the offensive line and the entire offense. To a great extent, Incognito dictated the culture. (We view Jerry and Pouncey primarily as followers of Incognito, and we doubt that matters would

have gotten so out of hand had Incognito not set a tone on the offensive line that made extremely vulgar taunting a typical form of communication.) More significant, Incognito, Jerry and Pouncey appear to have directed their bullying behavior toward Martin and a few others because they were perceived as quieter, different and unlikely to fight back. To the extent that certain players believe that the locker room should have regulated itself, there is a fundamental problem with self-regulation when the very perpetrators of the harassment are in fact leaders of the team.

While Martin participated in crude and offensive conduct, his personal style was not an asset in a battle of insults with Incognito, Jerry and Pouncey. Incognito conceded that he could tell that participating in demeaning banter “wasn’t [Martin’s] cup of tea” and that Martin sometimes responded to verbal onslaughts by saying nothing more than “fuck you.” By Incognito’s account, Martin responded in this manner, rather than with more creative retorts, because he had not grown up “talking shit” and was not as “witty” as Incognito, Jerry or Pouncey. For these reasons, it is easy to conclude that Martin was being pressured to play a game that he did not really want to join, with rules that were foreign to him. Indeed, on May 6, 2013, Martin wrote in a text message to a friend: “I am unable to socialize with my teammates in their crude manner.”

With respect to the Assistant Trainer and Player A, Incognito’s proffered excuses for the abuse were the same: it was all harmless fun, they willingly participated and joked back, and no one was offended. But just like Martin, the evidence shows that Player A went along with unwanted conduct because he was a young player. According to one witness, “no one really messed with Incognito—especially as a rookie. Even the coaches kind of took little comments from him.” The evidence also supports a finding

that the Assistant Trainer was offended by the racist comments that repeatedly were sent his way, but did not feel that he had the standing to do anything about it.

9. Martin's Friendship with Incognito Does Not Excuse the Abuse

Incognito stressed to us that Martin was one of his closest friends and that he intended no harm to Martin. In fact, according to Incognito, he was one of Martin's greatest protectors on the team. Many Dolphins players reported that Incognito and Martin seemed inseparable; some said they viewed Martin as Incognito's little brother. Incognito called Martin his "road dog," claiming that Martin willingly and frequently wanted to "hang out" with him at restaurants, bars and other nightclubs, at all hours of the day or night. Incognito points out that Martin never let on that he felt harassed, and asserts that if he had known that his behavior seriously troubled Martin, the conduct immediately would have stopped.

Indeed, Incognito says that Martin's entire story of alleged harassment is inconsistent with their close personal relationship—which was so close, in fact, that Martin felt comfortable revealing to Incognito details of his struggle with mental health issues and his contemplation of suicide. In doing so, however, Incognito claimed, Martin never suggested his troubles related to his treatment by his teammates—a fact that Martin did not dispute. Incognito also emphasized that he cared so much about Martin and his career that he counseled him not to engage in recreational drug use out of concern that it would undermine his performance on the field.

Text messages exchanged privately between Martin and Incognito, most (but not all) of which recently have been made public, provide some unfiltered insight into their relationship. These communications—more than 1,300 between September 2012 and November 2013—show that both players frequently used vulgar language and

made crude misogynistic and homophobic remarks. These communications reflect that Martin typically did not express offense to coarse language.

When interviewed, Martin agreed that he had developed a friendship of sorts with Incognito. He acknowledged that they had similar interests and that Incognito helped him improve as a football player. He said he freely joined Incognito at strip clubs. Martin explained that he deliberately cultivated a friendship with Incognito in part to gain acceptance on the offensive line as well as to reduce the insults streaming his way. Martin claimed that there was a “good Richie”—his friend—and also a “bad Richie”—his abuser. Plainly, their “bipolar” friendship was complicated. Three text messages that Incognito sent to Martin on March 18, 2013, within a span of approximately 10 minutes, highlight some of the complexities of their relationship.

(12:23 pm) Incognito: What’s up pussy?

(12:32 pm) Incognito: I love u

(12:32 pm) Incognito: #bipolar relationship

These messages show that the interactions between Martin and Incognito could swerve, on a moment’s notice, from vulgar and aggressive to affectionate or even caring. And both of them recognized this.

In two text messages, Martin referred to Incognito as “bipolar.” When, in a text message sent to a group of offensive linemen, Incognito taunted him for saying he would arrive late to a Las Vegas trip, Martin responded: “Sounds like my kind of vacation-- getting my ass beat & shit on by a bipolar psychopath.” And when describing a physical altercation with Incognito at a Christmas party, discussed below, Martin wrote: “Yeah these guys are insane too lol Incognito is the most bipolar person I’ve met...At

one point he pulled his shirt off & tried to beat my ass yesterday . . . Then 5 min later it was like nothing even happened and we went to the strip club.”

The text messages between Martin and Incognito are highly probative evidence and demonstrate that—as Martin acknowledged—the two players seemed to be friends. Were these communications the only available information for us to consider, it would be difficult to reach the conclusion that Martin truly felt harassed by Incognito and others. But these messages are not the only significant evidence we reviewed. The additional relevant information here includes Martin’s contemporaneous text messages to his parents and the witness statements and documents showing that Player A and the Assistant Trainer also were harassed. Moreover, Martin’s core allegations related to instances where he was verbally abused in front of his teammates, usually in the offensive line room, on the practice field or in the locker room. As a general rule, Martin said, Incognito was friendlier and less aggressive in one-on-one encounters. Ultimately, we conclude that the “bad Richie” did in fact verbally harass Martin, and the acts of kindness and friendship by the “good Richie” do not excuse the abusive conduct.

10. Martin Never Reported the Abuse to the Dolphins Organization

Martin admitted that he never told anyone in the Dolphins organization that his teammates were harassing him. Martin claimed that there is a general code in football against “snitching” on fellow players and that he did his best to honor that rule. The Dolphins offensive line enforced this general prohibition with their own peculiar rule—the so-called “Judas” code, which was buttressed by the imposition of fines (see Section 11 below).

Sometimes, a fine would be levied on a lineman who was branded a “Judas,” meaning a traitor or “snitch.” For example, if Coach Turner, while watching

game film footage, criticized a lineman for missing an assignment, and that lineman pointed out that one of his teammates was actually at fault, that lineman might be labeled a “Judas,” which could result in a fellow player imposing a fine. Multiple Dolphins offensive linemen were familiar with the “Judas” concept and told us that Coach Turner had discussed it with them. Turner, however, denied knowing what the term “Judas” meant in the context of the Dolphins offensive line. In fact, he denied ever hearing the term “Judas” or “Judas fine” used in the offensive line room. He also denied lecturing players on its meaning. We do not credit Turner’s denials. The evidence shows that Turner was aware of the “Judas” concept and that he had discussed its meaning with the linemen, explaining how Judas had betrayed Jesus Christ and defining Judas as a “snitch.” Further, Chris Mosley, the Dolphins former assistant offensive line coach, claimed that Turner actually introduced the Judas concept to the offensive linemen.

We accept that the fear of being labeled a “snitch” or a “Judas” played a role in Martin’s decision not to report abuse from his teammates. Martin believed that going to his coaches or other authority figures meant risking ostracism or even retaliation from his fellow linemen. At the same time, we strongly believe that if Martin had reported the harassment to a coach or front office executive (or even his agent), the team may have been able to address his issues before it was too late. There is no question that the better course of action would have been for Martin to report the abuse. We also agree with the view, expressed by many of Martin’s teammates, that it would have been preferable for Martin’s grievances to be handled inside the Dolphins organization rather than played out in the national news media.

11. The Fine Book Shows that Incognito Knew that the Harassment Affected Martin

At the beginning of the 2013 season, the Dolphins offensive linemen began to impose fines on each other for a variety of trivial and often sophomoric offenses, such as farting, arriving late for meetings, failing to provide candy, having “stinky dreads” or wearing “ugly ass shoes.” Such “kangaroo courts” are not uncommon in professional sports. Incognito and Pouncey, the leaders on the line, determined many of the fines, but other linemen also assessed penalties. The fines, which were recorded (often by Incognito) in a spiral notebook known as the “fine book,” generally ranged from \$10 to \$500. The money was paid to Tyson Clabo, an offensive tackle who served as the line’s “treasurer.” Clabo kept the accrued paid “fines,” which by November 2013 amounted to approximately \$35,000, in his locker, saving the money to fund a post-season vacation trip for the group.

The \$10,000 Fine

After the fine system was established, Incognito and other linemen told Martin that he had been assessed a \$10,000 fine for not attending a group trip to Las Vegas in January 2013. Martin repeatedly was told that he was required to pay this fine, and he eventually did, by check. Incognito and others said during their interviews that they were obviously joking when they told Martin he had to pay this amount and claimed they never thought Martin would actually pay the \$10,000, which was by far the highest fine paid. Martin reported that he paid the money because he did not believe his teammates were kidding with him and that he felt coerced into paying. In contrast, Jerry, who also did not attend the Las Vegas trip, told us that when some of the linemen tried to fine him \$10,000 for refusing to join the trip, he responded, “fuck no,” and never paid,

recognizing that the demand was not serious and that there were no consequences to ignoring it.

Martin views the \$10,000 fine for not attending the Las Vegas trip as part of his teammates' overall pattern of harassment of him. Because there was an attempt to fine Jerry as well as Martin, and because Martin may simply have misunderstood that his teammates were kidding with him, we do not find that the fine was an instance of intentional harassment.

Fine for "Breaking Jmart"

Incognito told us that he and other offensive linemen routinely speculated, albeit in jest, about which of their teammates would "break first" in response to taunting, and notations in the fine book substantiate this. One lineman, Nate Garner, was subjected to so much derision that a joke developed that Garner, who owned several guns, might "break" by coming to the Dolphins facility and shooting everyone. On September 30, 2013, for example, Incognito wrote a text message to a former teammate in which he stated: "Nate is on the verge of killing us all." When asked to elaborate, Incognito explained: "Since we cut [another player] we have been non stop on nate. Even turner is in on it. He looks like he's about to cry 24/7."

In the hours after Martin left the Dolphins, Incognito recorded in the fine book a \$200 penalty against himself for "breaking Jmart," awarded Garner a \$250 bonus for "not cracking first," and wrote down the following fines for Martin:

100 pussy
100 pussy
100 pussy
100 pussy
1,000,000.00 pussy

The relevant page from the fine book is reproduced below.

Bmac	Dallas	JJ	Pannay
25 50 Last week	150 stinky	100 No Fine	100 Subpoena by FBI
125 50 Alcatraz	Dreads		100 Negative Nancy
50 Free style	100 No Candy	100	500,000,000.00
			100 Salty
125	250		300
Incognito	Clabo	Watkins	Nate
10 Fart	50 grey hair	100 Rocco	+125 Not Cracking First
200 Breaking Jmart	100 Fart	50 knee slide	500 Laying on the field on blocked FG
200	100 2 Bye weeks	50 man Down	250
	150	200	
Weaver	John Martin	Brenner	Yeatman
100 No Candy	100 Late	100 No Candy	150 catching TD
100	100 keeping the ready call to yourself	100	150
Ann	100 pussy		
500	100 pussy	100 Fart on your way out	
	100 pussy		
	100 pussy		
	1,000,000,000 pussy		

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Incognito acknowledged that the entries in question all relate to Martin's decision to leave the team. At first Incognito claimed that he did not know why he had been fined for "breaking Jmart," but upon being told that the notations appeared to be in

his handwriting, Incognito did not dispute that “breaking Jmart” meant causing Martin to have an emotional reaction in response to taunting.

Incognito’s Attempted Destruction of the Fine Book

On November 3, 2013, Incognito wrote nearly identical text messages to both Pouncey and Garner: “They’re going to suspend me Please destroy the fine book first thing in the morning.” Fortunately, neither heeded this request. Incognito told us that he wanted the fine book destroyed because he believed it would be “misunderstood” if it was reviewed outside of the offensive line. We believe Incognito’s concerns were well founded—not because the fine book would be “misunderstood,” but because, viewed in context, it would prove that Incognito was fully aware that the verbal taunting had caused Martin to break emotionally. Incognito’s attempt to destroy the fine book is a classic example of evidence demonstrating “consciousness of wrongdoing.”

12. No Malicious Physical Attack of Martin Occurred at a 2012 Christmas Party

One of Martin’s representatives issued a press release on November 7, 2013, alleging that Martin “endured a malicious physical attack” that purportedly took place at a Christmas party for the offensive line that Pouncey hosted at his home on December 17, 2012. We find this allegation to be exaggerated.

According to Martin, what began as inoffensive pushing and shoving with Incognito escalated to play boxing and then took a more physically aggressive turn when Incognito took off his shirt, tackled Martin onto a sofa, and began punching him in the body and the face (though not hard enough to bruise or draw blood). Martin stated that he struggled to get Incognito off of him until several of his teammates broke up the scuffle. Martin believed that Incognito was trying to humiliate him in front of his teammates.

From Incognito's perspective, what happened at the Christmas party was not a big deal. He asserted that this episode was nothing more than friendly "roughhousing," and denied any intent to embarrass Martin.

We believe that the encounter went beyond mere roughhousing; Martin relayed in text messages to a friend the next day that Incognito "tried to beat my ass" and "body slammed me onto the couch and started punching me in the face." But Martin sustained no injuries and, according to another text message by Martin to the same friend, "5 min later it was like nothing even happened and we went to the strip club." Accordingly, we do not find the encounter to have been "a malicious physical attack," although we fully credit Martin's statements that he found the episode humiliating and viewed Incognito's conduct as consistent with his pattern of demeaning Martin in front of other players.

Finally, when interviewed, Martin voiced some other allegations of physical harassment, claiming, for example, that Incognito sometimes shoved him or ate food taken from his locker. We did not find these allegations particularly disturbing, although we accept that they may have taken on particular significance in Martin's mind. But as a general matter, after considering the factual record, it seems that verbal abuse, more than any alleged physical harassment, contributed to Martin's departure from the Dolphins.

13. Coach Philbin and the Front Office Did Not Know About the Harassment

As part of our investigation, we examined whether the Dolphins management and/or coaching staff was aware of how Incognito, Jerry and Pouncey were treating Martin. We also addressed the allegation that Dolphins management had issued an order to Incognito to "toughen up" Martin.

Coaches

We find that Head Coach Joe Philbin was not aware of the mistreatment of Martin, Player A or the Assistant Trainer. After interviewing Coach Philbin at length, we were impressed with his commitment to promoting integrity and accountability throughout the Dolphins organization—a point echoed by many players. We are convinced that had Coach Philbin learned of the underlying misconduct, he would have intervened promptly to ensure that Martin and others were treated with dignity.

Martin claimed that both of his offensive line coaches, Turner and Mosley, overheard some of the raunchy comments about his sister, in the offensive line room or on the practice field. Incognito does not dispute these assertions. According to both Martin and Incognito, Turner neither joined nor criticized the harsh language. Also, both Martin and Incognito said they thought Turner was a good coach.

Turner denied witnessing or overhearing any inappropriate treatment of Martin by his teammates, but Mosley admitted overhearing the crude joking about Martin's sister; in fact, Mosley specifically recalled a two-week period during which Martin's teammates constantly made such comments. Martin also asserted that, on occasion, Mosley participated in such insults; Mosley denied this. Ultimately, however, both Martin and Incognito agreed that the bulk of the insulting comments were not made in front of Turner and Mosley, and both players were uncertain to what extent their coaches truly appreciated the nature of the conduct at issue.

We note that Martin did not allege that any Dolphins coaches or personnel heard Incognito calling him a “nigger.” Such conduct occurred away from the

workplace, along with most other racially derogatory taunting addressed to Martin, except for Incognito's "stinky Pakistani" gibes.

We find that Turner knew that Player A was taunted for supposed homosexuality. According to Incognito, such comments were made with "high frequency." Turner denied hearing them, but because he gave Player A a male blow-up doll for Christmas (while giving the rest of the linemen female dolls), we do not find his denial credible.

Based on the entire record, we find that Coaches Turner and Mosley were certainly aware of some of the insulting comments directed to Martin by Incognito, Jerry and Pouncey, although we cannot determine the full extent of that awareness and whether they had any appreciation of how hurtful this language was to Martin. It is undisputed that these coaches never sought to stop the behavior.

With respect to the Assistant Trainer, Martin and other players claimed that O'Neill, the head trainer, not only overheard the racist insults, but also sometimes laughed along and never intervened. We did not cover this specific topic in our interview with O'Neill, which was cut short because O'Neill expressed hostility toward our investigation.

Front Office

We found no evidence that the Dolphins' front office was aware of the conduct Martin found abusive. Nor did we find any support for the allegation that Dolphins management directed Incognito to engage in the behavior that is the subject of Martin's complaints.

Incognito told us that Jeff Ireland, the Dolphins' former General Manager, and Brian Gaine, the team's former Assistant General Manager, each took him aside on separate occasions in 2012 and told him to take responsibility for making Martin physically tougher and stronger. Incognito said he understood their instructions to mean only that he should work with Martin in the weight room to improve the rookie's physical strength. He denied suggestions in recent news stories that he had been told by someone in the Dolphins organization to "toughen up" Martin by hazing him or treating him in a harsh or inappropriate manner. Incognito also told us that his taunting of Martin was not related in any way to instructions about making Martin "tougher." Both Ireland and Gaine denied that they gave Incognito any instruction to make Martin "tougher."

Given that the alleged instructions, by Incognito's own admission, had no relationship to the verbal abuse we discovered, we saw no need to make a credibility determination regarding the conflicting recollections of Incognito, on the one hand, and Ireland and Gaine, on the other.

Coach Turner's Post-Departure Text Messages to Martin

On November 2, shortly after Martin left the Dolphins, Coach Turner began sending him text messages urging him to defend Incognito in a public statement. Martin responded to one, but then stopped communicating with Turner, who continued to pressure him to "DO THE RIGHT THING" for several days afterward, as shown below.

November 2, 2013:

Turner: Richie incognito is getting hammered on national TV.
This is not right. You could put an end to all the rumors
with a simple statement. DO THE RIGHT THING. NOW.

Martin: Coach. I want to put out a statement. Believe me I do.
This thing has become such a huge story somehow. But
I've been advised not to... And I'm not supposed to text

anyone either cuz last time I responded to a teammate (Richie) I was intentionally manipulated and the conversation was immediately forwarded to a reporter.

Turner: He is protecting himself. He has been beat up for 4 days.
Put an end to this. You are a grown man. Do the right thing

Turner: John I want the best for you and your health but make a statement and take the heat off Richie and the lockerroom.
This isn't right.

November 3, 2013:

Turner: I know you are a man of character. Where is it?

November 6, 2013:

Turner: It is never to late to do the right thing!

When he sent these messages, Turner knew that Martin had left the team unexpectedly, had hospitalized himself in connection with a mental health condition and that Martin had previously struggled with serious psychological problems and had contemplated suicide. We accept that Turner may have believed in good faith that Incognito was being unfairly attacked by the media, but he should have realized that it was inappropriate to send such text messages to an emotionally troubled player. We find that these text messages to Martin demonstrated poor judgment on Coach Turner's part.

14. The Verbal Abuse Was Contrary to Team Policies

The contrast between the Dolphins' formal anti-harassment policies and the reality of the Dolphins' locker room is striking.⁵ In 2013, Dolphins players were provided with a workplace conduct policy, taken from the NFL handbook, which prohibited harassment. (It appears that the written policy was not distributed in 2012.)

The 2013 policy states:

⁵ In Appendix B, we describe and provide excerpts from relevant Dolphins workplace policies and related materials.

Harassment can include, but is not limited to: unwelcome contact; jokes, comments and antics; generalizations and put-downs; pornographic or suggestive literature and language. In addition, harassment and discrimination are not limited to the workplace: they example [sic], through calls, texts or emails, on a plane or team bus; at a team event; or at the team hotel.

As the players uniformly acknowledged, Coach Philbin embraced this philosophy and frequently reminded the team to be respectful, including in two annual addresses and repeatedly throughout the season. His presentation materials included exhortations such as: “The locker room is the most important room in the building- Respect one another.”

Team owner and chairman Steve Ross conveyed the same message. In response to Martin’s departure, Ross issued a statement that read, in part:

The NFL locker room is a special place, no doubt, but that does not mean that different rules of decency and respect should be in play. Winning championships is what we are all about, but we cannot do so if any of our family members are challenged from reaching their potential.

The same day, Ross also said: “There will not be any racial slurs, or harassing, or bullying in [the Dolphins] workplace, in that locker room and outside the locker room.” When we met with Ross, he expressed his dedication to improving Miami’s workplace conduct policies and procedures, and we found him sincere.

The Dolphins’ 2013 anti-harassment policy, Coach Philbin’s admonitions about respect and Ross’s vision for the Dolphins’ organization are inconsistent with the mistreatment of Martin, Player A and the Assistant Trainer described above and throughout this Report. But the Dolphins’ policies and Philbin’s statements were general in nature. Understanding of the policies throughout the organization might be improved if detailed examples of the types of joking or taunting that amount to unacceptable

behavior are distributed. In addition, formal training concerning the kind of trash talking and other behavior that could amount to harassment in the workplace should be provided to the players and coaches.

15. The Dolphins' Plans To Improve the Team's Workplace Conduct Policies Are Commendable

Our mandate did not include setting standards for what types of behavior should be permitted or prohibited within the Miami Dolphins organization. The Dolphins intend to take up this challenge during the next few months. The team has announced that an internal review of relevant policies and procedures is underway, and also has formed an independent advisory group, whose members include former NFL head coaches Don Shula and Tony Dungy, along with several prominent retired players, to review the organization's conduct policies and make recommendations on areas for improvement. We encourage these efforts.

The behavior that occurred here was harmful to the players, the team and the league. It was inconsistent with a civilized workplace—even in a professional football league and even among tough football players whose very profession is defined by physical and mental domination of players across the line of scrimmage. There are lines—even in a football locker room—that should not be crossed, as they were here. We leave the determination of precisely where to draw those lines to those who spend their lives playing, coaching and managing the game of professional football.

* * *

Below, Part I of this Report discusses the background to our investigation, the scope of our mandate, our independence and the information we considered. Part II

discusses in largely chronological fashion the relevant facts on which we have based our findings and conclusions above.

I. Background

A. Events Leading to the Appointment of a Special Investigator

On October 29, 2013, the press reported that Miami Dolphins starting right tackle Jonathan Martin had missed his second straight day of practice due to an undisclosed illness. The next day, it was reported that Martin had left the team's facility on October 28, following a prank in the cafeteria, and was receiving treatment at a facility to "help himself out."

On October 31, a news article claimed that Martin had been the subject of an "abusive environment" featuring "persistent bullying and teasing from some teammates." The next day, news stories identified Dolphins left guard Richie Incognito as one of Martin's antagonists. Incognito initially denied the allegations of abuse. On November 3, the Dolphins issued a statement asserting that "the notion of bullying . . . has not been presented to us." Soon thereafter, the Dolphins announced that they had received notification of "allegations of player misconduct" and had asked the NFL to conduct a review. On the evening of November 3, 2013, the Dolphins announced that Incognito would be suspended indefinitely for "conduct detrimental to the team."

On November 4, ESPN published a transcript of a voicemail message that Incognito had left for Martin months earlier. The voicemail, quoted above at page 10, contained a racial slur and coarse, abusive language. The story attracted national attention.

The combination of events—Martin's departure, allegations of an abusive environment, the Dolphins' request for a league review, Incognito's suspension, the release of the voicemail and the gathering media attention—led Commissioner Goodell quickly to authorize a comprehensive and independent investigation.

B. The Scope and Independence of the Investigation

On November 6, 2013, Commissioner Goodell announced that he had retained Theodore V. Wells, Jr. and this law firm, Paul, Weiss, Rifkind, Wharton & Garrison LLP, to conduct the independent investigation. The NFL's press release states that our mandate was to "direct an independent investigation into issues of workplace conduct at the Miami Dolphins and prepare a report for the commissioner, which would be made public."

Neither the NFL nor the Dolphins imposed any constraints on the investigation. Paul, Weiss received the full cooperation of the league, the Dolphins organization (including current and former players, coaches, front-office staff and other personnel) and the NFLPA. We had authority to request interviews of anyone deemed to have relevant information, including present and former NFL players, coaches, staff and personnel. We were given access to pertinent documents from the NFL and the Dolphins. Our investigation took place independently from any concurrent inquiries undertaken by the NFLPA, the Dolphins or individual players and their attorneys.

No representative of the NFL, the Dolphins, the NFLPA or any player drafted, reviewed or edited this Report. The Report presents the independent opinions of Mr. Wells and his colleagues.

C. Interviews Conducted

In connection with this review, we interviewed more than 100 people (some of them more than once). The great majority of the interviews took place in person; several were over the telephone. In mid-November 2013, we interviewed every player who was on the Dolphins' roster, all of the Dolphins' coaching staff and key front office personnel. We also interviewed a number of former Dolphins, some of Jonathan

Martin's teammates from Stanford, two of Martin's coaches from Stanford, Martin's parents and his agent.

D. Material Reviewed

As part of this investigation, we collected and reviewed a broad range of material, including the following:

- Text Messages. Both Incognito and Martin provided relevant text messages, including messages they sent to each other and messages exchanged among fellow Dolphins offensive linemen. We also obtained text messages sent and received by key Dolphins personnel.
- Emails. The Dolphins provided relevant email communications from the files of key personnel.
- League and Club Policies and Procedures. We reviewed human resources policies and procedures for the NFL and the Dolphins, as well as the applicable Collective Bargaining Agreement.
- Player Scouting, Medical and Security Files. We reviewed the Dolphins' scouting, medical and security files for Incognito and Martin, which included a limited number of medical records.
- Legal and Scholarly Materials. We reviewed relevant case law and articles provided to us by counsel for Martin and the Dolphins, and conducted our own independent research. In addition, we considered arguments and information provided to us by counsel for Martin and Incognito.
- Other Materials. We reviewed pertinent news articles and commentary, HBO's 2012 Hard Knocks series and relevant social media, among other materials.

E. Expert Consultation

We retained and consulted with William H. Berman, Ph.D., an expert in matters relating to workplace dynamics, interaction and culture and interpersonal dysfunction within workplace relationships. Dr. Berman is a Board Certified Clinical Psychologist and an American Psychological Association Fellow with more than 30 years

of experience as a clinician and organizational consultant. Since 1993, he has provided consulting services to organizations and businesses on issues related to workplace behaviors and dysfunction. Since 1983, as part of his clinical psychology practice, Dr. Berman has treated many patients who have been victims of abusive relationships in schools, at work and in the home.

F. Witness Privacy and Other Considerations

Because of the extraordinary public interest in this matter, the Commissioner made the decision that the full Report as presented to him, without any redactions or modifications, will be released to the public. Accordingly, we attempted to protect the privacy of certain individuals whom we interviewed or wrote about, recognizing that many of them never asked to be dragged into the spotlight.

In some cases, witnesses specifically asked that their identities remain confidential—a few even seemed to fear potential retaliation for cooperating with our inquiry—and we honored their requests. The NFLPA was sensitive to the privacy concerns expressed by some witnesses and was helpful in obtaining the necessary cooperation. We hope that by demonstrating sensitivity to issues of privacy and requests for confidentiality, we will encourage witnesses to cooperate with any future investigations by the NFL (unconnected with this matter) that may result in public reports.

With respect to certain events described in this Report, we did not publish all of the details provided to us during our investigation. We took this approach to respect the privacy or protect the confidentiality of certain individuals, particularly on very personal and sensitive subjects, and we do not believe that doing so in any way compromised the integrity of this Report.

The cooperation of all persons and entities that assisted this investigation—including by providing relevant documents—was voluntary, although Dolphins management encouraged players and personnel to cooperate with the investigation. As this investigation was not part of any official proceeding, we did not have the power to issue subpoenas or otherwise possess the ability to compel witnesses to make statements or produce documents.

Martin, Incognito, the NFL and the Dolphins organization all provided written materials to us and cooperated fully. The NFL completed its document production on November 21, 2013; Incognito completed his on December 13, 2013; Martin completed his on December 18, 2013; and the team sent us a final batch of documents on January 30, 2014.

In this Report, we have quoted relevant text messages, with few modifications to the original language of the messages, but we chose not to attach as exhibits all of the text messages that we received and reviewed, in part because of privacy concerns and because we did not want to cause further embarrassment to the authors of these messages or embarrass certain third parties. The vast majority of text messages between Martin and Incognito have already been released and are in the public record, with few redactions, and readers who are interested in examining them can easily find them. We note that we have a relatively small amount of additional text messages sent between Martin and Incognito that have not been made public and which are, in our view, cumulative of the already-released text messages. To the extent that Incognito or Martin or anyone else with a stake in this matter wishes to disclose any additional documents or

information, they are free to do so, but we were not convinced that it was necessary or appropriate for us to make any such disclosures.

II. Factual Summary

A. Relevant Parties

1. Jonathan Martin

Jonathan Martin is 24 years old and a second-year player in the NFL. Higher education and professional success have long been prized in his family. His parents, Clarence August “Gus” Martin and Jane Howard-Martin, are both African-American and both graduates of Harvard College, and Ms. Howard-Martin received her law degree from Harvard Law School. Martin’s maternal grandparents and his maternal great-grandfather all received degrees from Harvard. Martin also was admitted to Harvard, among other top colleges. Had he chosen to attend Harvard, he would have been the first fourth-generation African-American student in the school’s history.

There have been lawyers in every generation of Martin’s family dating back more than a century. Ms. Howard-Martin has spent her career as an employment defense lawyer; Mr. Martin, who also holds a law degree, is a professor and university administrator.

Martin primarily was raised in the Los Angeles area, along with his older sister, who is now a medical student. Today, Martin is 6 feet, 5 inches tall, and he weighs approximately 312 pounds; not surprisingly, he was always big for his age as a child. Nevertheless, he reported being bullied in middle school and during his early high school years until he became a star football player. He began experiencing bouts of what he self-diagnosed as depression in high school, but he did not tell anyone about these problems nor seek any treatment at that time. Despite what he perceived as struggles

with social adjustment, he became a popular and well-liked high school student at the Harvard-Westlake School, a private school in Los Angeles, in part because he excelled at football. He achieved national recognition in high school for his on-field achievements and was recruited by a number of colleges across the country. Martin ultimately decided to attend Stanford University, largely because of its strong athletic program. He enrolled in 2008.

During Martin's first three years at Stanford, Jim Harbaugh was the head coach. After Harbaugh left Stanford in 2011 to become the head coach of the San Francisco 49ers, offensive coordinator David Shaw was named Stanford's head coach.

Martin had an outstanding college football career. After redshirting his first year,⁶ Martin started 37 games for Stanford at left tackle. This position is widely viewed as one of the most important in football. Typically, the left tackle's key responsibility is to block the pass rush of defensive ends. As discussed in a 2006 book by Michael Lewis, *The Blind Side: Evolution of a Game*, most quarterbacks are right-handed, and as they position themselves to throw the football downfield, they turn their backs to pass rushers attacking from the left side. The left tackle must protect the quarterback's vulnerable "blind side." Today, left tackles frequently are among the top picks in the NFL draft and among the highest-paid players on professional football teams.

During his college career, Martin excelled at protecting the blind side of star quarterback Andrew Luck, who was selected first in the 2012 NFL draft by the Indianapolis Colts. Martin was also a highly regarded player: he was a two-time All-

⁶ "Redshirting" refers to deferring a period of athletic eligibility while participating in practice and academic studies. Athletes commonly "redshirt" to spread their four years of eligibility over a longer period of time.

American and a 2012 finalist for the Lombardi Award, given annually to the best lineman or linebacker in college football.

Several former Stanford football players, as well as coaches Harbaugh and Shaw, concurred that Martin was a talented athlete and a great teammate, with an admirable work ethic. Both Coach Harbaugh and Coach Shaw emphasized that Martin was a well-adjusted and popular player while at Stanford.

Martin enjoyed the camaraderie on the Stanford team and did not feel that he was inappropriately hazed or otherwise harassed in college. He claimed that although his Stanford teammates teased each other from time to time, the jokes were generally good-natured; for example, it was reported that he was ribbed for speaking in a slow, deep voice. Although initially quiet, he became a vocal leader on the team by his final year. Coach Harbaugh emphasized that he never doubted Martin's physical or mental toughness, and he believes that Martin can continue to have a successful career in the NFL. Coach Harbaugh also said that the atmosphere in the Stanford locker room, in his view, was not materially different from that of the San Francisco 49ers' locker room.

At Stanford, Martin majored in Classics and relished his intellectual development. As in high school, he became popular on campus because he was a star athlete, and he was viewed as friendly and approachable, with an easy laugh. According to Martin, he experienced what he described as sporadic episodes of depression while at Stanford, but they were mild and manageable, and never interfered with his academic or athletic performance, and he never discussed these issues with his coaches.

In January 2012, Martin declared his eligibility for the NFL draft. On April 27, 2012, Dolphins General Manager Jeff Ireland made the decision to draft Martin

in the second round of the 2012 draft. Martin was the 42nd pick overall and signed a four-year contract worth approximately \$4.5 million.

2. Richie Incognito

Richard “Richie” Dominick Incognito, Jr. currently is 30 years old. He is Caucasian. The son of Richard and Donna Incognito, he spent his childhood in Northern New Jersey. Much of the information below was gleaned from press articles and the Dolphins’ personnel and security files.

News accounts state that Incognito had run-ins with bullies as a boy. In 1995, Incognito’s family moved to Glendale, Arizona, where Incognito became a football star at Mountain Ridge High School. After being recruited by several college football powerhouses, Incognito chose Nebraska. He redshirted in 2001, his first season, and subsequently developed into one of the nation’s best offensive linemen, earning numerous accolades, including an All-American award and multiple All-Conference honors.

Incognito’s college career, however, was marred by behavioral problems, on and off the field. Fighting led to suspensions and an ejection from a game. He was accused of spitting on an opposing player. He was arrested several times, including for being a minor in possession of alcohol. In 2004, he was charged with three counts of assault stemming from a fight at a party and convicted on one count of misdemeanor assault. Apparently in response to this pattern of behavior, Nebraska required him to receive anger management counseling.

In 2004, Incognito was suspended indefinitely from the Nebraska football program. Publicly, no specific reason was given, other than repeated discipline issues. Incognito has admitted, however, that the indefinite suspension followed a positive test

for marijuana use and a shoving match in the locker room with a teammate, after which security escorted him out. Following his suspension, Incognito enrolled at Oregon in 2004, only to be released one week later, reportedly for violating a team policy.

Incognito entered the NFL draft in 2005. NFL scouts regarded him as a talented and hard-working player, but his arrest record and other behavioral shortcomings made him a risk. One scouting report, for example, stated: “This is an overly aggressive player. He will hit you in the back & is liable to cost the team. . . . I would be very concerned about his character.” At least three teams (the Colts, the Patriots and the Ravens) reportedly passed on Incognito during the draft because of character concerns.

Nevertheless, the St. Louis Rams selected Incognito in the third round of the 2005 draft, and he played with the Rams for five seasons, until 2009. During this time, Incognito became notorious for bad behavior on the field. In the 44 regular season games he played for the Rams, Incognito committed 38 penalties, seven of which were for unnecessary roughness. The NFL fined Incognito in connection with four of his infractions; collectively, the penalties amounted to \$85,000. In 2009, The Sporting News named him the “Dirtiest Player in the NFL.”

In a December 2009 game against the Tennessee Titans, Incognito committed two personal fouls for unnecessary roughness, and he was benched after engaging in an on-field yelling match with his head coach. These penalties led the NFL to impose \$50,000 in fines on Incognito, and he was cut from the Rams’ player roster. Incognito was claimed off the waiver list by the Buffalo Bills, and he played the remaining three games of the 2009 season with the Bills.

The Dolphins had considered pursuing Incognito after he was cut from the Rams, and the Dolphins remained interested in signing him after the 2009 season ended. The team's scouts warned, however, that Incognito's extensive history of discipline issues made him a serious risk. In early 2010, Bill Parcells, then in charge of the Dolphins' football operations, along with General Manager Jeff Ireland, decided that Incognito was talented enough that the team should sign him to start at left guard. The Dolphins took a number of steps to mitigate their risks. Incognito was given only a one-year contract, essentially a trial period, and the deal included a "character clause" that gave the Dolphins the right to release him in the event of misconduct. We were told that Incognito is the only Dolphin who has been required to agree to such a term. In addition, Ireland met with Incognito and informed him that he would be subject to a "one-strike" policy for any on-field or off-field infractions.

According to Incognito, after he signed with the Dolphins, he dedicated himself to turning his life around. In a 2012 interview with NFL.com reporter Jeff Darlington—published as "The NFL's Dirtiest Player Comes Clean"—Incognito stated that prior to 2010, he had been "a complete mess" for a decade, had abused alcohol and drugs and allowed his mental health to go untreated, resulting in "a ton of mistakes." But after moving to Florida, he stated, he began taking mental health therapy seriously, started taking Paxil and embraced meditation, all as part of a concerted effort to remake himself.

During 2010, Incognito behaved well on the field, committing no personal fouls, and we are aware of no problems he experienced away from the game during this time. Although some concerns were raised about signing Incognito to another contract,

in 2011 the team signed him to a new three-year contract worth \$13 million. His contract again included a “character clause.”

During the 2011 season, Incognito continued to play well, and he did not get into trouble. Following the end of the season, however, there were further problems. In May 2012, Incognito engaged in two incidents of inappropriate behavior at a Dolphins’ charity golf tournament within the span of less than 24 hours. He has admitted that both incidents were fueled by alcohol. In the first, he and several other players commandeered a guest’s car for joy-riding in the parking lot of the golf club and allegedly damaged the guest’s luggage. The next day, Incognito allegedly molested a female volunteer at the tournament. He was accused of using a golf club to touch her genitals, touching her inappropriately with his body, squirting water on her and other inappropriate conduct, and she filed a report with the police. Incognito was not charged with a crime, but he entered into a confidential civil settlement to resolve the matter; news reports claim that he made a payment of \$30,000. The Dolphins fined Incognito \$5,000 for the first incident and \$50,000 for the second, both for conduct deemed detrimental to the organization. The \$50,000 penalty is one of the largest fines imposed on any Dolphins player to date for off-season conduct, according to team executives.

Incognito apologized to the Dolphins for his conduct at the golf tournament, but also filed a grievance against the team with respect to the \$50,000 fine. He disputes certain allegations made by the female volunteer at the golf tournament, though he does not claim his conduct was appropriate. That matter remains unresolved.

In June 2012, Incognito was accused of making inappropriate remarks to a patron at a Miami restaurant and entering her vehicle without permission. The Dolphins

investigated these allegations and concluded that they could not be substantiated.

Accordingly, they did not seek to punish Incognito in response to this incident.

In July 2012, as a result of his reported involvement in three negative incidents in just a few months, Incognito was summoned to meet with Commissioner Goodell to discuss his pattern of behavior. This meeting occurred in August 2012. Although Commissioner Goodell ultimately decided not to impose any additional discipline on Incognito at that time, it was made clear to Incognito, both in person and in follow-up correspondence, that his recent history of alleged misconduct reflected a troubling pattern. Incognito was told to ensure that his future behavior met the standards of the NFL's Personal Conduct Policy, at the risk of immediate disciplinary action.

Incognito's on-field performance during the 2012 season was highly regarded, and he was named to the Pro Bowl. At the end of that season, Incognito, along with teammate Reggie Bush, also won the 2012 Good Guy Award, which is presented by the South Florida Chapter of the Pro Football Writers Association to the Dolphins player or players who are considered to be the most professional and cooperative with the media.

In June 2013, Incognito was involved in an altercation with a bouncer at a nightclub in Miami. According to Incognito, he was attempting to intervene in a verbal dispute between the bouncer and his friend and teammate Brian Hartline when the bouncer attacked him. No criminal charges were filed against Incognito as a result of this incident. The Dolphins conducted their own investigation of the matter and decided not to impose any discipline.

During the 2012 season, Incognito and starting left tackle Jake Long functioned as the veteran leaders on the Dolphins' offensive line. After Long signed with the Rams in 2013, Incognito and starting center Mike Pouncey, a third-year player, were regarded as the leaders of the offensive line, if not the entire offense. At the beginning of the 2013 season, Incognito was elected, along with Pouncey, Ryan Tannehill, Dannell Ellerbe, Cameron Wake and Paul Soliai to the Dolphins' "Leadership Council," a group that serves as the team's representatives to Coach Philbin. All of the players vote for the Leadership Council. Jonathan Martin reported that he voted for Incognito and Pouncey because he viewed them as the de facto leaders of the offense.

Nearly every player we interviewed had a strong reaction to Incognito. Many of them emphatically stated that he was a great teammate, a force on the field and a hard worker in the weight room and in practice. Many considered him a leader and a friend. At the same time, we repeatedly heard him described as loud, aggressive and boisterous, with little sense of social boundaries—someone who was constantly making boorish jokes and getting in his teammates' faces, more so than other players, and frequently more than was welcome. A former teammate, Lydon Murtha, wrote in an article published on November 7, 2013 on SI.com that, while most people "can tell that some guys just aren't built for [razzing,] Incognito doesn't have that filter. He was the jokester on the team, and he joked with everybody from players to coaches."⁷ During our interviews, teammates referred to Incognito using such terms as "smart mouth," "inappropriate," "crazy," "vulgar" and "asshole." Several teammates referred to his more

⁷ Lydon Murtha, *Incognito and Martin: An Insider's Story*, The MMQB, Sports Illustrated (Nov. 7, 2013), available at <http://mmqb.si.com/2013/11/07/richie-incognito-jonathan-martin-dolphins-lydon-murtha/>.

outrageous behavior as “Richie being Richie.” One player, whom we found credible, said that Incognito was “a good player, but he is kind of a disease; he divides a locker room. . . .[Incognito] is the kind of guy who has to be the alpha male.” This player went on to say that Incognito “feels like he has to make fun of the younger players,” and “people join in with him so he doesn’t make fun of them.” Nearly all of the players with whom we spoke appeared to tolerate Incognito’s more colorful and aggressive behavior, even if they did not embrace it.

3. John Jerry

John Jerry, currently 27 years old, grew up in rural Mississippi and played college football at the University of Mississippi. The Dolphins selected him in the third round of the 2010 draft with the 73rd overall pick. Jerry is African-American.

Jerry plays right guard and has started since his rookie year, though he has missed some time due to health issues. Jerry stated that he considers Pouncey his closest friend on the team, and he credits Incognito with providing significant veteran guidance. Jerry stated that he had been excited to meet Martin because he knew Martin would be filling a gap on the offensive line, and he claimed that he had developed a friendship with Martin.

4. Mike Pouncey

Mike Pouncey is the starting center for the Dolphins. He is 25 years old and biracial. He is from Lakeland, Florida. Before entering the NFL, Pouncey achieved success as a member of national championship teams in high school and again at the University of Florida, where he was an All-American and team captain. The Dolphins drafted Pouncey with the 15th overall pick in 2011.

Dolphins players and coaches consistently praised Pouncey for his prowess on the field. As noted, he was elected to the Leadership Council in 2013. When interviewed, Pouncey said that his closest friends on the team were Incognito and starting right guard John Jerry. He also spoke highly of Martin, calling him a “good football player” and a “hard worker,” and said that he was baffled by Martin’s departure from the team.

5. The Miami Dolphins Organization

The Miami Dolphins have a storied history. The team began playing in Miami in 1966, in the American Football League, and after the merger with the National Football League, won Super Bowls in 1972 and 1973 under legendary head coach Don Shula. They completed the NFL’s only fully undefeated season in 1972, when they went 17-0. During the 1983-1999 time period, the Dolphins were led on the field by Hall of Fame quarterback Dan Marino, who took the team to the Super Bowl in 1984 and to the playoffs nine other times. Since 2000, however, the Dolphins have struggled. They have reached the NFL post-season only once since 2001. The Dolphins won only one game during the 2007 season, but rebounded in 2008, winning the AFC East title with an 11-5 record. Since that time, the team has not returned to the playoffs. The Dolphins lost their last two games of the 2013 season, missing a playoff berth that was up for grabs, and finished with an 8-8 record.

(a) Jeff Ireland

In January 2008, Bill Parcells, who recently had been appointed the Dolphins’ Executive Vice President of Football Operations, hired Jeff Ireland, with whom he previously had worked at the Dallas Cowboys, as General Manager. In September 2010, Ireland assumed full command of the Dolphins front office; Parcells

became a consultant and subsequently left the organization in 2011. Many of the player personnel choices at issue here (such as the decisions to sign Incognito and draft Martin) reflect Ireland's judgments. On January 7, 2014, the Dolphins announced a mutual decision to part ways with Ireland.

(b) Joe Philbin

On January 20, 2012, Philbin was named the head coach of the Dolphins. Philbin had spent the previous nine years coaching for the Green Bay Packers, serving first as the Packers' assistant offensive line coach and then, eventually, as offensive coordinator from 2007-2011. Philbin coached at the collegiate level from 1984-2002, serving primarily as an offensive line coach or offensive coordinator.

(c) Jim Turner

Turner became the Dolphins' offensive line coach on February 12, 2012. This is his first coaching job in the NFL. Turner spent 2008-2011 as the offensive line coach at Texas A&M and previously held coaching positions at a number of colleges, including Northeastern University during the 1994-1998 period, where Joe Philbin was the offensive coordinator and offensive line coach for part of the time. Turner served in the Marine Corps from 1990-1994.

B. The 2012 Season

1. Martin's Arrival at the Dolphins

After being drafted by the Dolphins in April 2012, Martin attended a rookie minicamp at the team's training facility in Davie, Florida in early May. He then returned to Stanford to finish his academic year, and reported to the Dolphins on June 11 for team workouts, which were followed by a mandatory minicamp. After a break of

approximately five weeks, which he spent in California, he joined the team for its full training camp on July 27.

Martin reported that he was excited to become a member of the Dolphins and that he enjoyed his first few months with the club. He knew he had a chance to be a starter. Although he had played left tackle in college, the Dolphins had Jake Long, the number one draft pick in 2008 and a repeat Pro Bowl selection, at that position, so the right tackle job was given to Martin. Initially, he found his teammates friendly, and some of the veterans mentored him. Martin said that he sought and received guidance about technique from Long and that Incognito treated him well during the summer of 2012.

Martin was initially quiet. Some players said they rarely heard him speak, especially during his first year, although he apparently became more vocal over time. According to Martin, he was initially reserved because he wanted to earn his teammates' respect through his play on the field rather than through his words, an approach he had followed at Stanford. Incognito said that he took it upon himself to help Martin become part of the group.

On any football team, the offensive linemen tend to be a close-knit group, and the Dolphins were no exception. The Miami linemen were often shoulder to shoulder, on the field and off. At the team's training facility, they practiced together, attended meetings and watched film together in their own room and ate together at the same table in the cafeteria. They socialized after team activities, on off-days and during the off-season, not necessarily as an entire line, but frequently in smaller groups, going to sporting events, restaurants, movie theaters, bars, nightclubs or strip clubs together. In

addition, the offensive linemen sometimes used group text messages to communicate with each other.

Martin has not alleged that he was subjected to inappropriate or abusive rookie hazing in the Dolphins training camp. As described to us, the rookie initiation practices during Dolphins camp were relatively innocuous: for example, most first-year players were given clownish haircuts, required to buy food for their teammates and made to participate in a “talent show” that involved singing a song before the entire team. Some of these antics were shown on the HBO television program *Hard Knocks*, which was filmed at the Dolphins training camp in 2012. Martin indicated he viewed the rookie initiation activities as mild stuff and a normal rite of passage that did not bother him. Because Martin was the rookie offensive lineman who received the largest signing bonus, he had to pay most of the bill for a lavish dinner for the entire offensive line. Although the bill for this meal amounted to approximately \$8,000, Martin did not object and does not regard paying for the dinner to have been abusive or unfair.

During his first training camp, Martin, who was often referred to by his teammates as “Jmart,” was given the nickname “Big Weirdo.” It appears that Artis Hicks, a veteran, and Mike Pouncey bestowed the name on Martin because, according to Pouncey, Martin was “a quiet guy, always reading books; that’s not common for a football player.” Incognito also viewed Martin’s intellectual pursuits as unusual. Further, Incognito noted that, while football always had been his “number one goal,” Martin seemed to have a variety of other interests and passions. Martin felt that the “Big Weirdo” nickname signified that he was viewed as different, specifically because of his

intelligence and his enjoyment of reading, but he did not consider it offensive, and he did not tell his teammates to stop using it.

Martin's teammates shared his view that the Dolphins' rookie initiation practices during training camp were basically harmless. Some of them reported that Coach Philbin disapproved of harsh treatment of rookies and that the team respected his wishes. Others commented that the Dolphins' approach to rookie initiation was typical for the NFL, and a few players and coaches said they had witnessed more severe conduct toward rookies on other teams, such as tying rookies to goalposts or dumping rookies in cold tubs, things that apparently did not happen at the Dolphins training camp.

2. Insulting Language Directed at Martin

Martin asserted that his teammates began to treat him in an increasingly disrespectful manner early in the 2012 season, after training camp. The starters with the most experience, especially those who were regarded as leaders or standout players, set the tone for the whole offensive line. Martin told us that the dominant linemen sometimes singled out rookies and back-up players for jokes or harsh language, and those subordinate players typically chose not to fight back.

Martin traced the onset of what he considered to be verbal harassment to around the first game of the 2012 season, when, according to Martin, John Jerry began to call him a "bitch" repeatedly, in what Martin said was a disrespectful and demeaning tone. Martin reported that at one point, Jerry dared him to "say something back," and soon after he did not, the insults escalated, with Incognito, Jerry and Pouncey routinely calling him a "bitch" as well as a "faggot," a "cunt" and a "pussy." Martin said that, in keeping with his reserved nature, he generally was reluctant to respond aggressively to

the name-calling, and he believes that his failure to respond encouraged his teammates to intensify their verbal attacks.

Martin acknowledged that profanity is often thrown around casually by college and professional football players. He said he was not surprised or bothered to hear vulgar words directed at him from time to time. In his view, however, Incognito, Jerry and Pouncey repeatedly and frequently hurled profanity at him, and not in a joking manner, but in a demeaning tone, a view the evidence supports.

3. Comments Regarding Martin's Sister

At some point early in the 2012 season, in September or October, Martin mentioned his sister in a conversation with other offensive linemen. Martin's sister is a medical student; none of the linemen has met her in person.

According to Martin, after learning that he had a sister, Incognito, Jerry and Pouncey started making repeated graphic sexual remarks about her. Typical insults, Martin reported, were along the lines of the following statements:

- We are going to run train on your sister. She loves me. I'm going to fuck her without a condom and cum in her cunt.
- Hey, Jmart's sister is in town. Get the plastic sheets ready, she's a squirter.
- I'm going to bang the shit out of her and spit on her and treat her like shit.
- Hear your sister has a wolf-puss. A fat, hairy pussy.

Martin informed us that his initial reaction to these insults was to object, saying things like, "stop it – that's disgusting," or "that's gross," but that these tepid responses merely emboldened Incognito, Jerry and Pouncey. On occasion, by Martin's account, he responded by saying, "fuck you," to which a teammate might respond, "I'm

still going to fuck your sister.” Once, upon hearing vulgar comments about his sister while waiting for an offensive unit meeting to begin, he says that he threatened “to start swinging in 30 seconds” if the comments did not stop, but his threat was not taken seriously, and the comments stopped only because coaches arrived and the meeting began. Incognito, Jerry and Pouncey said they did not recall hearing Martin issue this challenge, but another player recalled that on several occasions Martin told them to stop and threatened to start swinging.

Martin conceded that for the most part he did not challenge Incognito, Jerry or Pouncey when they made crude comments about his sister. He generally remained silent in the face of such remarks, and sometimes turned or walked away, or shook his head, which he felt was enough to convey his displeasure. Martin also believed the comments were so offensive on their face that it would be obvious to anyone that they were inappropriate. For example, Martin recalled Jerry once saying that Martin would “kick [his] ass” one day in retaliation for the comments. Martin believed his teammates persisted because they knew that he did not like their language but would not do anything about it.

Incognito did not dispute that he and others made repeated vulgar insults about Martin’s sister. Incognito stated that one goal of making such graphic comments was to irritate his teammate, and he recognized that Martin at times got agitated when his sister was ridiculed. Other teammates concurred that the “sister comments” seemed to make Martin unhappy. One player, whom we found credible, said that Incognito and others routinely mocked Martin’s sister and described the taunting as “an everyday

constant thing.” This player added that the insults about his sister were “what would get to [Martin] the most.”

Martin told us that he was hesitant to challenge Incognito, Jerry and Pouncey in a more forceful manner because they were the veterans and more dominant members of the offensive line. Martin said that he had no desire to fight his teammates, and realized he could not succeed if he tried. Martin also believed that if he tried to fight Incognito, Jerry or Pouncey, all three would respond in a way that would make things worse for him. Martin also said he saw the taunting that took place throughout 2012 as part of rookie hazing, and he hoped that if he simply endured it his second year would be better. He reported that he often arrived at the Dolphins facility silently repeating the mantra “just get through the day.”

The evidence shows that crude and vulgar comments about Martin’s sister became a running “joke” among the Dolphins offensive linemen that never completely died. Martin claimed that he heard taunts about his sister from early in the 2012 season until he left the team in October 2013—often multiple times per day. Coach Mosley recalled that he had heard vulgar remarks about Martin’s sister steadily for approximately a two-week period during the 2012 season. Although it is difficult to determine the precise frequency of this language—and Martin may well have recalled it as happening more often than was the case, perhaps because of how offensive he found the language—we have no doubt that these comments were made frequently.

Martin reported that he heard the insults about his sister throughout the Dolphins training facility—in the locker room, on the practice field, in the showers, in the offensive line room (often before meetings got started), even sometimes in the cafeteria.

He said that these comments at times were made in the presence of Coach Turner, who neither participated nor urged his teammates to stop, and around Coach Mosley, who on occasion joined in, saying things like, “Jmart, I heard about your sister.” Incognito did not dispute Martin’s assertions that Turner and Mosley heard such comments. Martin maintained that Kevin O’Neill, the Dolphins head trainer, also heard such remarks and even laughed at them from time to time. On one occasion, according to Martin, O’Neill pulled him aside and told him he was too nice and needed to stand up for himself more. Martin also reported that other Dolphins personnel, including assistant trainers and equipment managers, likely heard the nasty comments concerning his sister.

According to Martin, when it came to what he considered to be verbal abuse, Incognito was usually the ringleader and Pouncey and Jerry tended to be followers, but Jerry was the worst offender with respect to his sister, because once Jerry got started he often kept going incessantly. Martin also claimed that Jerry (more than others) frequently made such insults in front of teammates from other units, including in the showers and in the team cafeteria; Martin viewed this as a calculated effort by Jerry to embarrass him.

Martin claimed that certain other players occasionally chimed in with their own “jokes” about his sister, but others reacted with awkward laughter or disapproval, particularly veterans from other units. Martin said he believed that he was not respected by his teammates because he remained silent and did not stand up for himself, and claimed this caused him further distress. By Martin’s account, Incognito, Jerry and Pouncey did not frequently make similar sexual remarks about family members to other players—only to him.

Martin also recalled that the comments about his sister were sometimes accompanied by obscene physical gestures. For example, he claimed that on the practice field, Incognito, Jerry and Pouncey would call his sister a “squirter” and then squirt water onto the field from their water bottles, and that while engaged in certain warm-up stretching exercises, they would simulate having sex with his sister. Incognito confirmed these allegations.

Although the vulgar comments about Martin’s sister were most often made orally, a few appear in text messages we reviewed. For example, on September 14, 2013, the following text message exchange took place among members of the offensive line:

Incognito: J mart. Ur such a fucking nerd. THAT’S A FINE

Pouncey: He’s salty about his fines!

Incognito: I would be too if I smelled like a camels dick

Pouncey: Lol

Jerry: Bap Bap

Martin: You know what a camel dick smells like?

Pouncey: Lol sensitivity fine!

Incognito: No Ur mother told me in vivid detail tho

Pouncey: Lmao!

Clabo: Mom jokes!

Incognito: Bap bap

Jerry: Chill Bro Chill!!!!!!

Incognito: I flew jmart’s sister into Indy. My dick is dry and needs some of her healing squirt juices

Jerry: Wow I want in

Pouncey: I will pay

Martin: Ohh SICK BURN you guys are so original. . . Not

Clabo: I just wanna watch

[photo omitted]

Pouncey: Lol we are going to fuck u up

[photo omitted]

Incognito: Caught red handed

Pouncey: Clabo you're a perv

[photo omitted]

Incognito: Clabo can watch We need someone to videotape

4. The View of Incognito and Others

Incognito and Jerry acknowledged to us that they made crude and vulgar comments about Martin's sister, and both confirmed that words such as "bitch," "pussy," "cunt" and "faggot" were used frequently among the offensive linemen and that Martin was sometimes addressed with these words. But Incognito and Jerry both said that it was critical to consider the words they used in context, and both strongly disagreed that any of this language was directed solely at Martin or that it was anything other than jokes or accepted locker room banter.

Specifically, they claimed that the offensive linemen, as a group, frequently spoke to each other in a vulgar manner and that no one player was singled out. Jerry, for example, stated: "We all joke like that. Some days it would be me getting joked on, some days it would be someone else." He also asserted that jokes about Martin's sister were made only occasionally. Further, Jerry downplayed the highly obscene nature of the offensive line's banter, in contrast to Incognito, who frankly

admitted that the language he and his teammates used was frequently extremely vulgar and likely to shock most outsiders.

Incognito pointed to the broader context of the offensive line's communications. He stated that the linemen were all like brothers, and a sign of their closeness was that they could "go for the jugular" in relating to each other. Incognito acknowledged that racial taunting might be out of bounds, but, in his words, "if a guy is okay with it, anything goes, unless he gets upset."

Incognito also suggested that vulgar language helped the offensive linemen bond into a cohesive unit. And both Incognito and Jerry claimed that they and others used off-color jokes to stave off boredom and help pass the time during long days of practice or travel.

In addition, Incognito and Jerry both claimed that Martin was a willing and active participant in the use of the kind of vulgar language about which Martin now complains. Incognito asserted that Martin sometimes would reply to nasty jokes with obscene comments of his own, orally and in text messages. According to Incognito, Martin occasionally said things like, "I'm going to fuck your mother in the mouth." Martin denied this. Incognito also remembered that Martin sometimes responded to verbal onslaughts by saying "fuck you." Incognito viewed this as a sign that Martin had not grown up "talking shit" and was not as "witty" as he and others were.

Incognito also told us that Martin sometimes was responsible for starting a round of vulgar insults about family members. We were skeptical of Incognito's recollection on this point, however, given Incognito's admission that participating in

vulgar banter “wasn’t [Martin’s] cup of tea,” given his background, and given that no other witness recalled Martin behaving in this manner.

In a nationally televised interview with Jay Glazer of Fox Sports, and also during this investigation, Incognito brought to our attention that Martin had sent him a text message on October 23, 2013—a few days before he left the team—that contained a photograph of a smiling woman embracing a dog with the words “I WILL MURDER YOUR WHOLE FUCKING FAMILY” embossed on the image. According to Incognito, this message suggests that Martin made comments about Incognito’s family that were fully on par with Incognito’s remarks about Martin’s family. We are unconvinced by this argument. The message Martin sent was one he had found elsewhere on the Internet, and it appears that he shared it with Incognito simply because he thought it was humorous. In fact, the image Martin sent was part of an Internet meme in which the words “I WILL MURDER YOUR WHOLE FUCKING FAMILY” are superimposed over non-threatening images, such as pictures of babies or puppies.

Incognito and Jerry both asserted in their interviews that Martin never seriously protested the way they treated him or told them to stop, that they were unaware that Martin was seriously offended by their language and that they would have stopped if they knew it was upsetting him. Incognito emphasized that Martin never came to him to urge that the vulgarity should stop, despite having plenty of opportunities to do so.

By contrast to Incognito and Jerry, Mike Pouncey flatly denied hearing vulgar language used toward any individual at the Dolphins facility at any time. He said he never heard anyone make statements to Martin about having sex with his sister and commented, “if someone said that to me I would punch them in the mouth.” In light of

the overwhelming contrary evidence, including the statements of numerous other witnesses (including Incognito and Jerry), as well as text messages, we do not credit Pouncey's denials.

5. Views of Other Linemen

Other members of the Dolphins offensive line in 2012 and 2013 told us that they had heard vulgar language used frequently. Most of them reported that they did not believe that Martin had been singled out for harsher treatment and that, in general, they did not believe that vulgar language was used on the offensive line to harm or demean. A few players said that they believed that Martin was treated better than other rookies because he was a starter, and they reported that other linemen, specifically Nate Garner and Josh Samuda, seemed to “get it worse.” Some linemen recalled hearing comments about Martin's sister, but most denied hearing such remarks made frequently.

On the other hand, several linemen, whose statements we credited, corroborated Martin's account that he routinely had been spoken to harshly and said they understood why he was offended. And several players we interviewed from other units on the team suggested that the vulgar language Martin complained about was over the top and was not common elsewhere among the Dolphins.

6. Treatment of Other Linemen

Martin was not the only Dolphins offensive lineman who was on the receiving end of taunting by his teammates, as described in more detail below.

(a) Player A

Martin and other witnesses informed us that Player A was repeatedly called a “faggot” and subjected to other homophobic invective. Incognito stated that Player A, although not actually believed to be gay, was subject to these taunts repeatedly

and persistently—he got it “every day from everybody, high frequency.” According to Incognito, Player A was a “good kid” and he “took it well,” never asking his teammates to stop.

Incognito and others acknowledged that Player A was routinely touched by Incognito, Jerry and Pouncey in a mockingly suggestive manner, including on his rear end, while being taunted about his supposed homosexuality. Incognito specifically admitted that he would grab Player A and ask for a hug as part of this “joke.”

Martin said that on one occasion, Pouncey physically restrained Player A and, in full view of other players, jokingly told Jerry to “come get some pussy,” and that Jerry responded by touching Player A’s buttocks in a way that simulated anal penetration. Pouncey and Jerry both denied this allegation. Given the seriousness of this allegation and the conflicting recollections, we decline to make any findings about this particular alleged incident.

The evidence shows that Coach Turner overheard and participated in this behavior toward Player A. During the 2012 Christmas season, Coach Turner gave all of the offensive linemen gift bags that included a variety of stocking stuffers. In each gift bag except for Player A’s, Turner included a female “blow-up” doll; Player A’s bag included a male doll. Martin and another player were surprised that Turner did this; Martin further said that he was offended that Turner had endorsed the humiliating treatment of Player A by participating in it. Incognito and others agreed that this incident with Coach Turner occurred. When interviewed, Turner was asked if he gave Player A a male blow-up doll. He replied, “I can’t remember.” We do not believe that Turner forgot this incident, which many others recalled.

Incognito asserted that Martin participated in the homophobic jokes about Player A—claiming that Martin joined in verbally and gave Player A the nickname “Loose Booty”—and that this fact supports his view that none of the linemen meant any harm. Incognito also referred us to a text message in which Martin joked that he would give Player A “bath salts & lock him in your house with a tranquilizer gun & a box of sandpaper condoms.”

Martin admitted that he sent text messages to Incognito referencing the “joke” that Player A was gay, but claimed that he refrained from making such remarks to Player A. Further, the evidence suggests that Player A did not view Martin as a source of harassment.

(b) Nate Garner

Nate Garner was selected in the seventh round of the 2008 draft. He joined the Dolphins later that year, and he has been a back-up offensive lineman during most of his time with the team. Garner, who is white, confirmed reports that he was often mocked by Incognito and other starters on the offensive line, in part because he was viewed as having interests that are considered non-traditional for a football player, such as computers and remote-control helicopters, and said that he was known as a “nerd.” He told us that he avoided sending text messages to the offensive line group out of fear that they would respond with derision. Garner believed that he was probably treated worse than Martin, and he told Martin, in an apparent effort to commiserate with him, that he had been through similar treatment. According to Garner, the company and support of his fiancée helped him deal with mocking statements from his teammates, but Martin did not appear to have a similar source of support.

Incognito conceded that Garner frequently was the target of ridicule, to the extent that a joke developed that Garner, who owned several guns, might come into the Dolphins facility one day and start shooting everyone. Text messages exchanged between Incognito and Long on September 30, 2013 provide insight into the treatment of Garner:

Incognito: Excited for tonight Nate is on the verge of killing us all.

Long: Good man It will be a good one for u guys tonight. Haha.
What r u guys doing to Nate.

Incognito: Since we cut samuda we have been non stop on nate.
Even turner is in on it. He looks like he's about to cry 24/7.

Long: Hahahaha. He's gonna go crazy one of these days.

Hours after Martin left the team on October 28, Garner sent him a text message stating: "Hey bro if u need to talk to anyone I'm here for ya. I have been dealing with this shit for 6 years. I hope ur doin ok."

Garner told us, however, that he considered Incognito a "good teammate" and a "leader in the locker room." He also said that the relationship he observed between Incognito and Martin was "always positive" and that he "didn't see any distress." With regard to Martin's departure from the team, he noted that he and other players "were in shock," adding that in his view Martin did not "handle it appropriately."

(c) Josh Samuda

In 2012, Josh Samuda was a rookie offensive lineman on the Dolphins, but not a starter. Samuda is black. He was on the Dolphins roster until the end of the 2013 training camp. The evidence shows that Incognito, Jerry and Pouncey (and others, at times) routinely ridiculed Samuda. On many occasions, according to Martin, Samuda appeared to enjoy being the center of attention, even if he was being mocked, and would

sometimes enter the locker room and announce recent sexual exploits, which encouraged his teammates to taunt him. During July 2013, Martin participated in a prank in which he and a few other linemen, including Incognito, “stole” Samuda’s car and moved it to another location. Incognito pointed to the treatment of Samuda as additional proof that the kind of behavior that Martin complains of was part of accepted locker room culture in which even Martin participated.

7. Treatment of the Assistant Trainer

The Assistant Trainer was born in Japan and attended university there through 2001, before emigrating to the United States. Martin said that Incognito, Jerry and Pouncey directed racial slurs at the Assistant Trainer, calling him a “Jap,” a “Chinaman” and a “chink”; referred to him as a “dirty communist” or a “North Korean”; made demands such as “give me some water you fucking chink”; spoke to him in a phony, mocking Asian accent, including asking for “rubby rubby sucky sucky”; and called his mother a “rub and tug masseuse.” Martin also informed us that Incognito and Jerry taunted the Assistant Trainer by saying that they had had sex with his girlfriend.

On December 7, 2012 (the anniversary of the attack on Pearl Harbor), Incognito, Jerry and Pouncey donned traditional Japanese headbands that featured a rising sun emblem and jokingly threatened to harm the Assistant Trainer physically in retaliation for the Pearl Harbor attack. Martin reported that the Assistant Trainer confided to him that he was upset about the Pearl Harbor prank, finding it derogatory and demeaning.

Jerry and Pouncey each admitted that they repeatedly used racial language toward the Assistant Trainer—including calling him a “Jap” and a “Chinaman”—and acknowledged their Pearl Harbor Day stunt. Incognito likewise did not dispute that he

and others directed these kinds of words at the Assistant Trainer, but said that this language was all in good humor and that the Assistant Trainer recognized that the words were not meant seriously, even responding with his own jokes. Moreover, Incognito stated that he did not discern a power or status differential between himself and the Assistant Trainer because he viewed everyone as equal, regardless of his position in the Dolphins organization. Incognito also claimed that he had a good friendship with the Assistant Trainer that included socializing outside of work. He pointed out that the headbands were gifts from the Assistant Trainer.

Martin told us that until he saw how the Assistant Trainer was treated he had never in his life witnessed flagrant racial harassment. Martin felt that the Assistant Trainer awkwardly laughed along with some of the racist comments, even though he was in fact offended. Another player reported that for a one-month period when he was receiving treatment in the training room, he heard Incognito making derogatory comments, including racial remarks, to the Assistant Trainer every day. Like Martin, this player also felt that the Assistant Trainer's awkward laughter in response to Incognito's verbal abuse belied his unease. This player also was offended to have to witness the abuse. By Martin's account, a number of Dolphins employees saw what was happening to the Assistant Trainer but did not intervene, including the head trainer, O'Neill, who even laughed at some of the racial insults. To our knowledge, no players, including Martin, ever intervened to support the Assistant Trainer or to tell Incognito, Jerry and Pouncey to stop using this kind of language.

Martin, however, described this treatment to a friend shortly after he left the team. In a series of text messages, he wrote:

He treated our Asian trainer horribly
Him and others
Called him a chink
Wore kamikaze headbands on the anniversary of Pearl Harbor
Idk it's really hard to explain
I just always felt so bad for . . .our trainer
Like. . .my teammates laughed
Other trainers laughed
It was really racist
Directly
“Give me some water you fucking chink”

We asked the Assistant Trainer about these matters. He said he was not comfortable answering questions on this topic and implied that he could not be candid with us because he was concerned about losing the trust of the players, which he felt would compromise his ability to perform his job.

When pressed, the Assistant Trainer denied that he was bothered by his treatment—a view that is undercut by a text message that he sent Martin the day he left the team: “Hey JM I understand how [y]ou feel man... They are relentless sometime.... Some day I wanna do exactly what you did today ... Just let me know you are doing alright. I am worried about you....” (emphasis added and ellipses in original).

8. Alleged Physical Harassment of Martin

(a) December 2012 Christmas Party

Martin’s most significant allegation of physical mistreatment related to an altercation with Incognito that occurred at a Christmas party for the offensive line that

Mike Pouncey hosted at his home on December 17, 2012. One of Martin's representatives issued a press release on November 7, 2013, alleging that Martin had "endured a malicious physical attack on him by a teammate," and subsequently informed us that this purported attack occurred at the Christmas party.

According to Martin, what began as inoffensive pushing and shoving with Incognito escalated to play boxing and then suddenly took a more aggressive turn when Incognito took off his shirt, tackled him onto a sofa, and began punching him in the body and the face (though not hard enough to bruise or draw blood). Martin said he struggled to get Incognito off of him until several of his teammates broke up the scuffle.

Martin claimed (and other players agreed) that Incognito had a loud, belligerent side of his personality, which some called the "Tornado," and which allegedly tended to emerge after Incognito had been drinking. In Martin's view, the "Tornado" attacked him at the Christmas party.

On December 18, 2012, Martin sent text messages to a friend from Stanford in which he retold the previous night's events:

Martin: We had a line gift exchange then went to a different strip club then south beach

Friend: That's awesome

Martin: Yeah these guys are insane too lol Incognito is the most bipolar person I've ever met... At one point he pulled his shirt off & tried to beat my ass yesterday it was nuts haha

Friend: Hahaha did people try and stop him or were they like fuck i[t]

Martin: At first they were like fuck it but we were in Pounceys house about to break shit, we were play fighting, then he body slammed me onto the couch and started punching me in the face it was insane hahaha

Friend: That's fuckin nuts

Martin: Yeah I started kneeing him in the nuts & elbowing him, pretty hard to[o]. Then it got broken up lol

Martin; Then 5 min later it was like nothing even happened and we went to the strip club

Martin said that these text messages present an accurate account of his physical altercation with Incognito at the Christmas party. He noted, however, that he found the incident humiliating and that he believed Incognito intended to embarrass him. Martin claimed that he downplayed these feelings in the above-quoted text messages because he did not want to disclose his humiliation to his friend.

Martin and Incognito also corresponded by text message on December 18, 2012, the day after the party. Incognito reached out to Martin in the afternoon, and they discussed Martin's activities in South Beach the night before. None of the messages suggests that Martin thought he had been physically abused by Incognito or that he was upset about his treatment. Martin said this was consistent with his practice of just trying to laugh off harassment.

On the Monday following the Christmas party, Martin claimed, a teammate came up to him in the locker room and said that he had heard that Martin had gotten beaten up at the party. Martin claimed that learning that news of the altercation had spread to other teammates heightened his feelings of embarrassment.

Like many of the incidents at issue in our Report, Incognito did not dispute the facts, but disagreed strongly about what those facts tell us about his relationship with Martin. From Incognito's perspective, what happened at the Christmas party was an unremarkable event with no overarching meaning. He admitted that he took off his shirt, claiming that he does so often, and recalled that he got on top of Martin on

the couch and punched him—but only playfully. He asserted that this episode was nothing more than friendly roughhousing, consistent with the way members of the offensive line tended to “horse around” from time to time, including at the Dolphins practice facility. Although he recalled that some of the linemen who witnessed the roughhousing were cheering him on, he denied any intent to humiliate Martin. He also denied that he had been drinking alcohol at the party.

(b) General Allegations

Martin also claimed that he was subjected to physical harassment. His allegations on this point include the following:

- Incognito and Jerry removed all of the contents from his locker and threw them on the floor;
- Incognito seized his food, sometimes removing it from his locker, and threw it away or ate it himself; and
- Incognito shoved him frequently, and although Incognito did this to others as well, Martin was shoved more, and with humiliating intent.

9. The Friendship Between Martin and Incognito

(a) Background

An intriguing and central aspect of the Martin/Incognito story is that they both agreed that they developed an increasingly close friendship during the 2012 season. At first blush, this would appear to be inconsistent with Martin’s allegations of harassment by Incognito—a point that Incognito made repeatedly and forcefully during our interviews.

From Martin’s perspective, there was a “bad Richie,” who would sometimes make abusive comments to him and occasionally physically bother him, but also a “good Richie,” and that he enjoyed socializing with the “good Richie,” in part

because they liked to frequent the same type of bars and nightclubs. When Martin's friends, including former teammates from Stanford, came to visit him, Martin would invite Incognito to join his group for dinner. And Martin acknowledged that Incognito gave him advice on how to improve his performance against defensive players and helped him get stronger in the weight room. Martin further stated that he was more likely to enjoy his time with Incognito when they were not in a large group of fellow Dolphins; in his view, Incognito was more prone to acting abusively when he had other players for an audience. Martin said he also socialized with Incognito in an effort to minimize the abuse.

Incognito said that while he and Martin appeared different on the surface, they were similar in many ways—they both liked playing video games, going to bars and talking to “girls.” The two men drew closer in the latter part of the 2012 season, after Jake Long was injured and they began playing next to each other on the left side of the offensive line. Incognito said he viewed Martin as his “little brother”; a number of other players reported that Martin and Incognito seemed as close as brothers. In fact, many of the Dolphins players told us that they thought Incognito was Martin's best friend on the team, that the two appeared inseparable, and that they had often been overheard in the locker room discussing recent social activities or making plans to spend time together after practice. Incognito told us that he still considers Martin his friend.

(b) Text Messages

Martin and Incognito exchanged approximately 1,300 text messages between September 10, 2012 and November 3, 2013. Incognito argued that these messages are powerful evidence that he never mistreated Martin, that they illustrate that the language that Martin now complains of was an accepted part of their everyday way of

communicating with each other, and that any objective observer reading these messages would conclude that Martin and Incognito were good friends with a mutually supportive relationship.

Martin produced to us more text messages between him and Incognito than between him and any other current or former Dolphins player—by far. And the vast majority of the messages do seem to show a mutual friendship. Many of the messages show Martin and Incognito seeking each other out, making plans to meet at bars, restaurants or other places. The two men talked about Dolphins’ practices and about college sports. They discussed intimate details of their sex lives, often in graphic terms. The language in many of these text messages is crude, but not only on Incognito’s part—Martin also made vulgar remarks. In some of the messages, Incognito took an aggressive tone toward Martin, addressing him as a “faggot” and a “cunt” when, for instance, Martin spurned an invitation to socialize. Martin rarely responded with protests or disapproval.

For example, some typical text exchanges between Martin and Incognito that demonstrate their close friendship include the following:

October 19, 2012:

Incognito: Lets get weird tonight

Incognito: This pack of hot chicks is celebrating a birthday on las olas tonight.

Martin: Damn that sounds fun. . . but I gotta be up early, so ima take it easy tonight.

Incognito: What for? Tail gating?? U big homo

Martin: Nah charity event at 9am.

Incognito: I don’t care. Ur coming out

. . .

Incognito: Miss [pageant] 2011. Here and a pack of hotties. Fun girls. Love to party

Incognito: Don't be a rusty cunt.

Martin: I can't pass that up lol I'm in.

Incognito: Nice

Incognito: I hope ur mind is right for tonight. Every slut I know is going out

Martin: Lol sounds good to me.

Incognito: Come over at 8:30

Incognito: I'm going to punch u in the face and key your Toyota if u don't come out tonight.

Martin: Haha fuck you ill be there

March 18, 2013:

Martin: Haha what's good man? Still in AZ?

Incognito: Yessir. In AZ training. U still in NorCal?

Martin: Yeah, heading out in 2 weeks to SoCal I think... I'll be in AZ the 25-28 at havasu

Incognito: Nice! U getting strong?

Martin: Yeah been out here grinding man

Incognito: Good shit! I'm grinding down hear too. Pouncey is killin it in FL TOO

Martin: Cool man I'm pumped to get after it when OTA's start

Incognito: Hell yea. Me too. We have a good thing going. Continue to build on what we did well last year.

Martin: Yessir

Incognito: How much do u weigh?

Martin: 319 on Friday... Gonna start running more so probably gonna lose a little

Incognito: NICE!!!

May 7-8, 2013:

Incognito: What's up dude? U good?

Martin: I'm good now bro I appreciate the text

Incognito: U good dude? Did u get some chick pregnant? I'll help u off her if that's the case

Martin: Lol yeah I'm good man. Ima hold you to that if I ever knock up a chick at [strip club]

Incognito: Hahahahaha

June 7, 2013:

Martin: You fuck that bitch?

Martin: We gotta kick it with her and her friend sometime

Incognito: No funky fucky Played with them titties for a bit tho :)

Incognito: How was [nightclub]?

Martin: [nightclub]? It was fun bro

Incognito: Yea, [nightclub] We went over to this other spot. Not [nightclub]. No ho's

Martin: Nice. Those titties looked awesome

Incognito: They are massive and fake. I love fake titties

July 6, 2013:

Martin: Yo wassup? My friend [name] who you met is having a kids football camp on Wednesday and was wondering if you'd stop by and talk to the kids

Martin: I'm gonna be back in Miami already

Incognito: I can't on wed. I'm getting a tattoo after work outs

We have not published, as an exhibit to this Report, all of the text messages between Martin and Incognito that were provided to us. We note, however,

that most of them have made their way into the public record in recent weeks for anyone interested in reading them.

We also note that the Martin/Incognito text messages tend to show that their pattern of behavior did not follow a simple “bully/victim” paradigm. At times, the texts show warmth and genuine caring on the part of Incognito. At other points, they show the repeated use of vulgar and race-based language and a tone of hostility on Incognito’s part that far exceeds anything that Martin authors.

On March 18, 2013, within a span of approximately 10 minutes, Incognito wrote Martin a series of texts that succinctly captures the nature of his communications to Martin:

(12:23 pm) Incognito: What’s up pussy?

(12:32 pm) Incognito: I love u

(12:32 pm) Incognito: #bipolar relationship

Martin contended that his exchanges with Incognito show a friendship at times but also illustrate his efforts to integrate himself into a world that he often found offensive, and ingratiate himself to Incognito, with the objective of reducing the harassment he faced. Our consulting expert, Dr. Berman, explained that Martin’s effort to befriend Incognito is consistent with the reaction of a person who is trapped in an abusive situation and that attempting to develop a close friendship with an abusive person is a common coping mechanism exhibited by victims of abusive relationships.

10. Martin’s Other Friends on the Dolphins

Martin had other friends on the Dolphins. He was close to Will Yeatman, another offensive lineman, who was his roommate on road trips. Notably, Yeatman stated that on some occasions he heard Martin and Incognito making plans to go out

together, and wished they would invite him too. Martin also became friends with a number of other rookies, including Josh Samuda and Jonas Gray.

11. Martin's Performance During the 2012 Season

Martin started every game for the Dolphins in 2012. His first 12 games were at right tackle, but when Jake Long tore his triceps in Week 13, Martin moved to left tackle and played that position for the rest of the year. According to Martin, his rookie year was challenging, but he was pleased with his performance overall.

By contrast, Coach Turner and Incognito criticized Martin's skills as a tackle and questioned his ability to put bad plays out of his mind and move on effectively. Nevertheless, Martin was good enough to start all of the games he played for the Dolphins.

In the last game of the 2012 season, the Dolphins were beaten 28-0 by the New England Patriots, and Martin turned in a bad performance, giving up two sacks. Incognito said that Martin confided in him that he was miserable because he had played poorly during the New England game, and Incognito claimed that Martin continued to beat himself up over the next few days, unable to get the bad game out of his head. Martin acknowledged that he was disappointed about his performance against the Patriots, but denied that this was the main cause of his unhappiness at the end of the season.

C. The 2013 Off-Season

1. Events of Early January 2013

When the Dolphins finished their 2012 season, Martin returned home to California and attended the Rose Bowl game on New Year's Day. He claimed he spent most of the next week lying in bed with the shades drawn, eating only one meal each day,

and that he viewed his lethargy as a symptom of depression that had been caused by the way his teammates had treated him on a daily basis throughout the season. He related that he felt miserable and worthless as he ruminated on his inability to defend himself or his family.

Martin also said that during the first week of January, he was dreading an upcoming trip to Las Vegas that he was supposed to attend with other members of the offensive line. This post-season trip was an annual tradition; most, but not all, of the linemen were invited, and all of the starters were encouraged to participate. Martin had agreed to go on the Las Vegas trip, but he said he did not actually intend to go because he could not bear to socialize with the players who had mistreated him during the season, and because he feared further humiliation.

On Sunday, January 6, Martin sent Incognito a text message stating that he was planning to get to Las Vegas on Friday (January 11), rather than Thursday (January 10), when the others were going to arrive. According to Martin, although this text message suggested that he still planned to attend, his indication of a late arrival was just his first step toward backing out entirely from the trip. The text messages Martin and Incognito exchanged on January 6 were as follows:

Martin: Yo you flying into Vegas Thursday?

Incognito: Yea, 3;30

Martin: Ok cool. I'm getting in Friday, I got a meeting that morning. When you leaving, Monday?

Incognito: Friday.... R u fucking serious

Martin: Yup... Don't worry I know I still gotta pay for hookers lol

Martin: I gotta get at least one for [Player A]...

Incognito: Don't forget the cocaine too

Incognito: No dude hookers u faggot

Incognito: Don't blame ur gay tendencies on [Player A]

Martin: I'm gonna get more bitches in 2 nights than all of you combined

Incognito: Stop it. By bitches u mean cocks in ur mouth

Incognito: U fucking mulatto liberal bitch

Incognito: I'm going to shit in ur eye

Incognito: Goodnight slut

Incognito: Tell ur squirting sister I said hi

Martin: Ah yes I missed being demeaned by you boys lol... Can't wait for this weekend

Martin told us that he was extremely upset by the last five text messages

Incognito sent to him on January 6. He said that he read them to mean that if he remained on the Dolphins, he would suffer continued harassment and that this was not merely a rookie phenomenon. The messages, he claimed, also reminded him that he had repeatedly failed to defend his family on the many occasions that his teammates had denigrated them. Martin said that in his mind, Incognito's text messages meant that he faced an impossible dilemma: return to an environment where there would be relentless harassment, or give up his dream job as a starter for the Dolphins, which would be humiliating and impossible to explain to anyone. Martin asserted that his depression reached a particularly low point on January 6 as a result of these messages, and that he contemplated suicide at this time.

Several days later, on January 9, Martin sent text messages to the offensive line group stating that he was not only planning to attend the Las Vegas

festivities, but he was looking forward to the trip. His teammates responded with text messages mocking him for not arriving on time. In one message, Incognito wrote: “Shut the fuck up weirdo. I’m going to beat ur ass and shit in ur mouth u fucking faggot.” Martin replied: “Sounds like my kind of vacation-- getting my ass beat & shit on by a bipolar psychopath.”

On January 11, Incognito sent the following text message to Martin: “What time u get in?” Martin responded: “Man I just can’t deal with this Vegas trip with what I’ve been dealing with recently... Let me know if I owe you anything for the room.” Incognito replied: “It’s all good. Let me know if you need anything.” When interviewed, Incognito stated that he did not know why Martin had backed out of the trip, but he had assumed it was a personal issue and did not want to pry further. Incognito’s attorney pointed to this text message, among others, as an example of how Incognito could be compassionate to Martin, and further contended that messages like these show that, despite his frequent use of language that was in poor taste, Incognito was in fact Martin’s friend and supporter.

2. Events of Late January to April 2013

Toward the end of the 2012 season, Martin and Incognito discussed plans to rent a house together for one week in Manhattan Beach, California. Incognito cited this as another example of the closeness of his friendship with Martin. On January 16, Incognito cancelled these plans because he was a late addition to the Pro Bowl roster. Martin claimed that he never intended to follow through with spending a week in Manhattan Beach with Incognito, and said that he would have backed out if Incognito had not done so first because he wanted to avoid Incognito after he left Florida.

In addition, text messages show that as early as December 2012, and continuing through February 2013, Incognito invited Martin on several occasions to join him on a trip to Brazil, but Martin consistently refused, offering reasons such as a desire to save money. Incognito also invited a handful of other players on that trip, but not all of the other Dolphins offensive linemen; he was ultimately joined by two other NFL players (who were not Dolphins at the time). Martin told us that he did not want to participate in this trip out of a desire to avoid Incognito, and because he feared that Incognito might abuse and humiliate him in Brazil. Incognito cited these invitations to support his argument that he was friends with Martin and intended him no harm.

On January 27, Martin sent his mother a text message in which he confided, among other things:

I have really severe depression. There are many instances where I can't get out of bed. . . . I'm really embarrassed to talk about it with anyone in person, I tried to with you when I was home but I couldn't do it. I've managed to keep it under control for the most part on my own. Anyways, I really do wanna take care of it, because it is debilitating & keeps me from reaching my potential in all facets of life.

Although this message does not mention a cause for Martin's reported depression, Martin told us that he sent it to his mother because he was upset about the way his teammates had treated him throughout the 2012 season. He claimed that he could not then bring himself to divulge their conduct to his mother or tell her that, in his view, it was the trigger for his depression. Martin's mother responded by encouraging him to begin treatment with a mental health counselor, but he did not do so immediately.

3. The April 6 Voicemail

During the early 2013 offseason, Martin worked out at Stanford, trying to get stronger for the upcoming season. On April 5, Martin posted the following message

on his public Twitter page: “Finished up my last workout here at [Stanford] . . .

Productive 10 weeks. Excited to get back to football.” Early the next day, Incognito

called Martin and left him a voicemail message, in which he stated:

Hey, wassup, you half-nigger piece of shit. I saw you on Twitter, you been training 10 weeks. I’ll shit in your fuckin’ mouth. I’m gonna slap your fuckin’ mouth, I’m gonna slap your real mother across the face [laughter]. Fuck you, you’re still a rookie. I’ll kill you.

Martin claimed that he was extremely upset by this voicemail message, and that he had never before been called a “nigger” by Incognito. He said he also was dismayed to hear Incognito say that he was “still a rookie” because he had been hoping that the verbal treatment he had experienced during his first year was rookie hazing that would not continue. Martin told us that he played this voicemail for a friend at Stanford, remarking that it showed how crazy Incognito was, and in response was told that Incognito was not his friend.

In discussing this voicemail in a nationally televised November 2013 interview with Jay Glazer of Fox Sports, Incognito conceded: “In no way, shape or form is it ever acceptable for me to use that word [nigger] even if it’s friend to friend on a voicemail.” Yet, Incognito has offered a number of explanations for the voicemail. He claimed that his use of the word “nigger” should be understood in the unique context of the way he communicated with Martin; that he and Martin had previously used “nigga” (as opposed to “nigger”) in private conversations; that they were close enough to joke around in this manner; and that he was just trying to “shock [his] buddy,” from whom he had not heard in weeks, into calling him back. Although the time when the voicemail was left and the tone of Incognito’s voice suggested that he might have been drinking when he left his message, he denied that to us. He also said that he recalled saying at the

end of the voicemail “call me back”—indicating that it was a friendly call—but Martin does not recall any such ending to the message, and our copy of the voicemail, which was produced to us by Martin, does not feature Incognito saying that.

Incognito said that Martin called him back and that they had a friendly conversation, during which Martin never mentioned the epithet and did not express that he had taken any offense. Martin denied returning Incognito’s telephone call in response to this message. Martin acknowledged that he never confronted Incognito about his use of the word “nigger” and said that he tried to ignore such comments and laugh them off. Text message records show that Martin sent Incognito a message on April 6 asking if Incognito had been “Twitter stalking” him. There is no reference in that text message or subsequent messages to the use of the racial epithet in the voicemail.

Incognito also asserted that he had heard Martin use the word “nigger” repeatedly, aggressively toward opponents in football games, and casually with his black teammates. Martin acknowledged speaking in this manner. Nevertheless, he told us that he never gave Incognito permission to address him as a “nigger.” Many of the Dolphins players we interviewed, black and white, believed that although black players might use the word “nigga” or “nigger” with each other, it was a completely different matter for a white person to do so.

In addition, Incognito claimed that on a number of occasions, he privately discussed using the word “nigger” with Martin and that these discussions referenced the fact that Martin and other black players used the word frequently and that it was widespread in rap music. Incognito said that they discussed the widespread usage of the

word, and he had wondered to Martin why black people could be so offended by hearing such a frequently used word. Martin denied that such conversations took place.

Further, Incognito said that his relationship with Pouncey, his close friend, was comfortable enough that he could use the word “nigga” to mock him. During his interview, Pouncey corroborated Incognito’s statements on this point and said that Incognito was considered “like a black guy” on the team. In Pouncey’s opinion, Incognito was allowed to make such comments. Indeed, Pouncey claimed that Incognito had addressed him as a “nigga,” in casual social contexts (over drinks, for instance), and said this was permissible because Incognito was his friend.

It has been reported in the news media that Martin allegedly played the April 6 voicemail from Incognito in the Dolphins locker room, and that wide receiver Brian Hartline heard it. When questioned, however, Hartline backed off this point, saying: “It could have been a different voicemail, I never heard the whole thing.” Incognito told us, however, that he thought that Martin had played the voicemail in the locker room for Hartline and others, and that Martin had jokingly remarked: “Can you believe what this redneck called me?” Martin vehemently denied that he had played the voicemail for any of the Dolphins, in the locker room or elsewhere, and stated that he would not have done so, or joked about it, because he found it highly offensive. In fact, according to Martin, in light of the voicemail and other racially charged comments that Incognito had made, he considered Incognito a racist. We found no evidence that we deemed credible to confirm that the voicemail was played in the locker room.

Martin claimed that Incognito subjected him to other racially charged remarks, including “ninja” (a word that was designated for white fans of rap music to use

when singing along to songs that included the word “nigger”) and “darkness.” These words appear in certain text messages that Incognito sent to Martin, but, according to Martin, were sometimes uttered orally as well. Martin said that he did not consider these words nearly as offensive as “nigger,” but that he was nevertheless troubled by them because he believed that they reflected racial hostility from Incognito.

In one text message from January 2013, quoted above, Incognito referred to Martin as a “liberal mulatto bitch.” Incognito said that he used this phrase because Martin “doesn’t carry himself like a black guy.” Incognito further explained that other players (specifically, Jerry and Pouncey) who are black had joked that Martin was not really black or not black enough. Martin recalled these jokes and believed they were made because of his upper-middle-class upbringing, education and deportment; he claimed that Jerry was the player who made most of these comments.

Martin also told us that he heard Incognito make other racially charged references during the 2012 season, such as saying, “I hate black people” (which Martin acknowledged was meant to be a joke), referring to another black player as a “spear chucker,” and making derogatory remarks about animal sacrifices to a Haitian trainer. And, as described above, Martin was troubled by Incognito’s language toward the Assistant Trainer.

Incognito’s text messages contain other racial comments. In January 2013, Incognito texted the phrase “Nigga what” to a group of offensive linemen that included Martin. On May 17, 2013, Incognito sent a message to a white former Dolphins player that said, “HUNTING SOUTH TEXAS NIGGA,” and on June 9, 2013, he wrote to a white current Dolphins player, “Lets go nigger.”

In December 2012, Incognito exchanged text messages with Player B, a white former Dolphins offensive lineman, about buying a rifle for recreational purposes, which led to comments about shooting black people:

December 13, 2012:

Player B: Fuck yea! That what I'm doin my .338 in. Badass

Incognito: That's gonna be sick

Player B: Especially if u plan living in Arizona in the future, that's exactly what you want

Incognito: Yea. For picking off zombies

Player B: Lol isn't that why we own any weapons!?

Incognito: That and black people

Player B: Mmm def all black ppl

December 17, 2012:

Incognito (referencing a rifle scope): Going to order it right now.

Player B: Yes. That's a solid optic made specifically for a .308 battle rifle

Incognito: Perfect for shooting black people

Player B: Lol exactly

Player B: Or Jeff Ireland

4. Events of April to May 2013

(a) Relevant Text Messages

In April 2013, Martin returned to Florida for off-season workouts. Text messages that he sent his mother late that month show that he was upset, and that he believed that a factor contributing to his depressed mental state was his inability to stand up to aggressive behavior from his teammates. On April 22, he sent his mother a lengthy text message that included reflections he had previously drafted. It stated:

I figured out a major source of my anxiety. I'm a push over, a people pleaser. I avoid confrontation whenever I can, I always want everyone to like me. I let people talk about me, say anything to my face, and I just take it, laugh it off, even when I know they are intentionally trying to disrespect me. I mostly blame the soft schools I went to, which fostered within me a feeling that I'm a huge pussy, as I never got into fights. I used to get verbally bullied every day in middle school and high school, by kids that are half my size. I would never fight back, just get sad & feel like no one wanted to be my friend, when in fact I was just being socially awkward. Most people in that situation are witty & quick with sarcastic replies, I never have been. I'm awkward around people a lot of the time because I simply don't know how to act around them, and am very in confident.

...

This past year I've spent more and more time by myself, as I have felt increasingly different from people... I thought college would be a good chance to grow and mature as a person, but I still find myself lost. Sometimes I very badly want to quit football, as I feel like it has 'forced me' to act a certain way, to hang out with certain people, & prevented me from fully taking advantage of the social and cerebral advantages of college & experiencing new things and meeting new people. But it is the one thing that has kept me going, given me focus. One day I want to disappear, travel the world, and hopefully find myself, because as of today I don't know who I am. I am deeply troubled, I have been lying to myself saying that eventually I'll get over it. I won't.

...

I just want to be alone. Where I can't embarrass myself all the time, where I can feel normal.

Everywhere I go, I get punked. I have a disagreeable personality, people are always annoyed by me. And I don't know how to stop it. I don't. High school still and will forever haunt me.

I always wonder why I have these feelings. I'm unbelievably blessed, I am living a dream that I have had my entire life, that most people would die even for the

opportunity to be where I am. I have an amazing family, had a great upbringing. Why do I always feel this way? I really am getting increasingly tempted to just get in my car and leave Miami, live by myself for months or a year or two off the grid. But something holds me back every time, because part of me still loves football. But I am losing touch with that part more and more every day.

Shortly thereafter, Martin's mother responded:

I am so glad you shared this with me . . . We will work through this together.

My first thought is that I am glad you wrote this down as a way to start figuring it out. There are people in the world with their own insecurities and they tend to be bullies and confront people. Dealing with them can be a challenge. I think when you feel really good about yourself they won't bother you as much because you won't let them define you. This fits into wanting to please and be liked. Some people out there are not worth it. We do live in a bubble. Financial and

professional success is sheltering. Which is both good and bad. I think the NFL has a disproportionate share of people who are obscure but masking it with aggression. Your profession is really difficult with measurement and evaluation every week. So we need to build up you liking you. This is where some professional help would be good. They can help you structure your thoughts. And that whole brain chemistry thing is real. You may need some additional serotonin. . . .

Follow-up messages from Martin to his mother on the same day included:

I care about my legacy as a professional athlete. But I'm miserable currently. A therapist & medication won't help me gain the respect of my teammates. I really don't know what to do Mom.

. . . I just always avoid confrontation, which is what I've always done, and that leads to [people] perceiving you as soft. I did it at Stanford, and didn't gain anyone's respect until I became a star.

Same thing in high school. I had no respect til I became a prospect.

Martin's mother responded with a series of messages the same day and the next day:

They don't understand you because their experience is limited and they have a one dimensional frame of reference. And I'm sure this week is tough with the draft coming up.

It takes more strength actually to avoid confrontation. There are many wa[ys] to be a man, not just what works in a school or prison yard. I think you need to surround yourself with positive people with a bigger world view.

. . . I was just thinking that there are many models of manhood. Look at Obama gentle but strong and powerful nut not a physical fighter you are more in his mold than in the mold of some of your teammates. But unlike Obama you have a dominating physical presence. You are just measured about when you use it. that is not being a pussy. That is being smart.

Martin explained to us that certain portions of the text messages quoted above refer to the conduct of Incognito and other linemen, although he did not mention them by name to his mother.

After exchanging these messages with Martin, his mother located a psychiatrist in the area of the Dolphins training facility, and Martin met once with this doctor, but the doctor quickly concluded that he was not a good fit for treating Martin, and they did not meet again. Martin did not seek any other treatment at this time.

(b) Dinner at a Local Restaurant

Martin returned to Florida from California in April 2013 and continued to socialize with Incognito and other teammates. On April 26, he joined Incognito, Will Yeatman, Anthony Fasano (former Dolphins tight end) and one of Fasano's friends for dinner at a local restaurant in the Fort Lauderdale area. Incognito and Martin made plans to meet at Fasano's house before going to the dinner together. Evidently looking for

Martin that night, Incognito sent him a text message that said: “Where u at shine box?” Martin was unfamiliar with this term, but considered it racially denigrating, and he replied, via text message: “Walking over now. Your racist shit.” Martin maintained that his response was an attempt to show Incognito that he was seriously offended by the “shine box” comment.

Martin described the dinner as a good evening out, and that everyone was laughing and joking. But Martin said that during the course of the evening Incognito made several inappropriate comments, including jokes about slavery and also used the word “nigger” in reference to him. Martin contended that these comments were said in the restaurant or in the parking lot, where someone else overheard the insults and expressed shock. Incognito denied making any derogatory comments, much less racial insults. Yeatman had no recollection of any racist language of this kind spoken during the dinner; but he said that there was a lot of drinking, that it was very loud in the restaurant and that it was possible he did not hear all of the comments made by Incognito to Martin. Yeatman also told us that he remembered that at the end of the night, Martin remarked that he had enjoyed himself, which would have been consistent with Martin’s typical practice of ignoring insulting comments by Incognito or laughing them off. But on April 29, Martin had the following text message exchange with his father:

Jonathan Martin: I wish I had your toughness dad

Gus Martin: You do, man. You just have to learn to tap into it. It is there at your core. As is compassion which is one of your great strengths.

Jonathan Martin: People call me a Nigger to my face. Happened 2 days ago. And I laughed it off. Because I am too nice of a person. They say terrible things about my sister. I don’t do anything. I suppose it’s white private school conditioning, turning the other cheek

Martin told us that he believed this text message related to the dinner and that it corroborated his claim that Incognito had used racist language that night.

Martin's father responded to the text message from his son by sharing his own ordeals:

They think nigger is okay because black people use it. Tell them you don't use it and it is never okay and if they do it again then they can kiss your black ass. Likewise say that your sister is a Madonna. If they say it again they can kiss your ass. If they do say either again then just stare at them give them and give them your finger.

Just so you know, I punked out many times including over nigger. Also over just being black. Not proud of it in the least. It is just a matter of understanding your own strength.

Had 3 white boys outside of a bowling alley calling me nigger. I backed down.

Had a Harvard asshole talk about my suntan. I backed down. Just stay who you are.

Also, I learned how to pop a bully in his mouth and kicked one in his balls.

Martin responded:

Yeah I think I would be fine if I didn't feel constant pressure to perform. And my performance was definitely affected end of last year

(c) Martin's Mother's Visit

In late April 2013, Martin's mother was worried about him and flew to Florida to console him. In addition to urging him again to seek professional help, she recommended that he get a dog, and the two adopted a rescue dog.

During her visit, Martin brought his mother to a Dolphins event at a Fort Lauderdale bar and restaurant. According to Martin, several of his teammates saw his mother that evening and later made inappropriate comments to Martin about her,

remarking that she was attractive and asking if she was “available.” Martin reported that he told them to shut up and not to talk about his mother, but the next day the comments allegedly continued; for example, according to Martin, Pouncey asked if his mother was single and remarked that she would not be married to his father for long, and Jerry suggested that he could have sex with Martin’s mother and sister at the same time.

Martin said he was greatly disturbed by the progression of comments about his sister to his mother. He informed us that following this time, Incognito, Jerry and Pouncey made sexually explicit comments about his mother in addition to continuing the taunts about his sister. Incognito did not dispute that such comments were made, but once again argued that they were part of trash-talking common among the Dolphins offensive linemen. Jerry said he could not recall comments about Martin’s mother. Pouncey denied making or hearing such comments at all.

(d) Martin Named Starting Left Tackle

In early 2013, the Dolphins considered acquiring another player to start at left tackle and kept Martin informed of this. But in early May, Coach Turner told Martin that the Dolphins had decided that he would be the starting left tackle. By Turner’s account, Martin replied, “that’s great, Coach” and seemed excited.

Around this time, the offensive line reviewed a film that showed a compilation of all of the sacks and pressures of their quarterback they had given up during the 2012 season, known as the “sack tape.” Incognito claimed that Martin was responsible for many of the sacks on the tape and that he could tell that Martin was upset after watching the film. Martin admitted that he had been responsible for some of the sacks and pressures, and he acknowledged that it was uncomfortable to watch the tape, but he also claimed that it motivated him to improve his game.

(e) May 4 Yacht Trip

On Saturday, May 4, Martin joined Incognito, Jerry, Pouncey and others for a trip on a rented yacht, which included a cruise in waters near Fort Lauderdale, followed by a meal at a seaside restaurant. Subsequently, the group went to a Fort Lauderdale bar. Martin claimed that Pouncey and Incognito verbally humiliated him throughout the day.

Martin said that, in addition to verbal abuse, Incognito demeaned him physically on the yacht by putting him in a headlock. Martin recalled that at least some of the insults from Incognito and Pouncey that day related to Martin's performance during the 2012 season, as documented on the sack tape. According to Martin, the taunting by Incognito and Pouncey made other participants on the trip uncomfortable, and he claimed that one woman questioned why Martin's teammates were giving him such a hard time, which heightened his embarrassment and made him feel helpless. Incognito and Pouncey both denied the allegations that Martin had been humiliated (verbally or physically) on the day of the yacht trip, although Incognito acknowledged that he and Pouncey had discussed the sack tape with Martin during the yacht trip and told him that he needed to improve as a player.

Following the yacht trip, Incognito's behavior at the Fort Lauderdale bar on May 4 was captured by someone apparently using a camera phone; this footage has been posted on the "TMZ" website.⁸ Martin was present at the bar when the video was filmed. Martin said that Incognito's conduct at the bar was an example of Incognito behaving as the "Tornado," and contends that the video clip corroborates his assertion

⁸ <http://www.t TMZ.com/2013/11/04/richie-incognito-n-word-bar-rage-video/>

that Incognito's behavior was aggressive and frightening that day. The video clip, which is a little more than one minute long, shows Incognito shouting and storming around the bar, bare-chested. Near the beginning of the video clip, Incognito yells the word "nigga"; he also repeatedly yells "Mike Pouncey" and other largely unintelligible comments. When interviewed, Incognito maintained that in this video clip he had been imitating Pouncey, who was also present.

Martin recounted to us that he left Incognito and the rest of the group at the bar and went home, feeling upset. He admitted that he had been intoxicated during this day, and said he could not recall with specificity the harsh comments Incognito and Pouncey had made, but he was certain that he had been physically and verbally harassed on the yacht. Martin's contemporaneous text messages provide further insight into his state of mind; they reveal that he felt so humiliated on the yacht trip that he went into the bathroom and cried.

On Sunday, May 5, at 12:58 am, Martin's mother wrote to him: "How was the yacht. So jealous!!!!" At 2:19 am, Martin replied:

I'm never gonna change. I got punked again today. Like a little bitch. And I never do anything about it.

I was sobbing in a rented yacht bathroom earlier

(f) May 2013 – Martin Misses Workouts

Martin asserted that in May 2013 he was depressed because of the way he had been treated on the yacht trip, at the restaurant where he was subjected to racist language and on other occasions. Martin said that he experienced extreme emotional distress on May 5, the day after the trip, and that this was the second occasion on which he seriously contemplated suicide.

On May 6, Martin claimed, he continued to grapple with his frustration and his inability to respond to verbal abuse, and he considered abandoning his football career. That day, he sent the following text message to a friend, in which he listed pros and cons of continuing to play football:

- Football games are fun
- I can make a lot of money playing football and be set for life
- I have a legacy that will live after I die
- not many people get to live their childhood dream
- I am the left tackle for the Miami dolphins
- if I quit, I'll be known as a quitter for the rest of my life
- my legacy at Stanford will be tarnished
- I will never be able to look any coach from my past in the eye

- I hate going in everyday.
- I am unable to socialize with my teammates in their crude manner
- I already have a lot of money. I could travel the world, get my degree. Then get a real job
- I could lose 70 lbs and feel good about my body
- I won't die from CTE
- Maybe I'll start to LIKE myself
- I don't need to live lavishly. I could live very frugally
- why do I care about these people? All I need is my family.

On Monday and Tuesday, May 6 and 7, Martin stayed home and did not report to voluntary off-season workouts. As a result, Coach Turner reached out to him,

and on May 7, Martin agreed to meet with Turner at the Dolphins training facility.

Martin and Turner provided largely similar accounts of this meeting.

Martin said that at the outset, he told Coach Turner that he was upset and that he was thinking about whether he should leave football. At first Martin was relatively tight-lipped and vague, attributing his absence to unspecified personal issues, but Turner pressed him, believing that something was seriously wrong. Specifically, Turner asked if Martin was experiencing suicidal thoughts, and Martin responded by describing to Coach Turner his contemplation of suicide in January.

Martin then began to open up, telling Turner about his history of self-diagnosed depression. In response, Turner told Martin that he should not take football so seriously, and he encouraged Martin to be happy that he was making a lot of money. Turner also asked if Martin's mental state was related to being named starting left tackle, and he asked if Martin did not want to play football anymore. Martin said "no" to both questions. Turner probed other personal and family areas, but felt that Martin did not articulate a concrete reason for his depression.

According to Martin, he told Turner that he had anxiety about football in a general sense, but he intentionally did not tell Turner that he was depressed because of the treatment by his teammates and his inability to confront them, which he viewed as a personal flaw. When we asked Martin why he had not disclosed his view that he was being harassed by some of his teammates, Martin told us that his reluctance to talk about his teammates' conduct stemmed from what he perceived to be a "code" in professional football that a player should not "snitch" on his teammates. He maintained that he was not fully candid with Coach Turner because he did not want to break this code and

because he did not want to jeopardize his ability to continue to play football by revealing the current severity of his depression.

Coach Turner promptly reported to Coach Philbin on his talk with Martin. Martin then met with Coach Philbin and discussed his depression and related mental health issues. This conversation lasted approximately 20 to 30 minutes. Coach Philbin told Martin that the team would get him help. Coach Philbin also told Martin he wanted to contact Martin's parents, and Martin agreed. Martin was then sent to O'Neill, the head trainer, who referred Martin to a local psychiatrist in private practice with whom the Dolphins organization has a relationship. Philbin also notified Jeff Ireland and the Dolphins Executive Vice President of Football Administration of his conversations with Turner and Martin.

Martin returned to off-season workouts the following day (Wednesday, May 8). We were told by the team that he did not receive a formal mental health evaluation to ascertain whether he was fit to resume practicing, but that the team understood that he had met with the local psychiatrist. Martin told us that during the first meeting, he discussed his depression and suicidal thoughts, and the psychiatrist prescribed Lexapro, an anti-depressant, which he began to take daily.

On May 9, Martin had the following text message exchange with his father:

Jonathan Martin: My day was good! I hope the earthquake wasn't too bad. Btw you are gonna get a call from one of my coaches, they are gonna ask about this situation I guess. Nothing serious just trying to deal with it

Gus Martin: Okay. Question: are you okay with me saying we intervened and it is being handled?

Jonathan Martin: Yeah

Jonathan Martin: I told my coach that I have had suicidal thoughts in the past so he may bring that up

Gus Martin: Okay. Is it alright and accurate to say you will be on the job and training?

Jonathan Martin: Yes

We were told by Martin's father that his reference to "saying we intervened and it is being handled" related to Martin's mother's recent visit to Florida, during which she tried to alleviate her son's anxiety, including by convincing him to see a psychiatrist and get a dog. Later that week, Martin's father spoke to Coach Philbin on at least one and possibly two occasions. They had a "father-to-father" talk during which Coach Philbin said the Dolphins were going to do whatever they could to help Martin. Martin's father recalled that Coach Philbin told him that the team had people in place to deal with such problems and mentioned the role of the local team-affiliated psychiatrist. While they have differing recollections about how detailed their discussion was, based on our interviews, we believe that Coach Philbin was genuinely sincere in his concern for Martin and that he attempted to provide meaningful assistance to the Martin family after learning that Martin was battling depression. Likewise, we commend Coach Turner—he took Martin's disappearance seriously, pushed Martin to discuss his depression and promptly reported the information to Coach Philbin.

(g) Martin's Visits with a Mental Health Professional

Following his first meeting with the team-affiliated psychiatrist, Martin began taking Lexapro and meeting with the doctor once a week. Although the first meeting occurred in the doctor's office, we were told by Martin that subsequent visits occurred at the psychiatrist's home, sometimes with the doctor's wife present. Martin reported that he typically brought his dog to play in the doctor's yard, and sometimes

they grilled steaks. These meetings were informal, and Martin did not regard them as therapeutic. According to Martin, he viewed the doctor as a friend, but felt that the doctor could not relate well to him because the doctor was 84 years old. Martin said he did not tell the doctor that he felt harassed by other players because he was afraid that the doctor might relay that to the team, in which case he would be marked as a “snitch.”

Martin said he saw the doctor regularly, once a week for a total of eight weeks, until he returned home to California in June for a break of approximately five weeks. He did not meet with a mental health counselor in California during that break. He reported that when he returned to Florida in July for training camp, he moved to a different apartment that was further from the doctor’s house, and his meetings with the doctor tailed off as a result. He could not recall how many times he had seen the doctor since July, but suspected that it may have been only once. Coach Turner learned that Martin had stopped seeing the doctor during training camp; Coach Philbin did not recall discovering this information until Martin left the team.

After early May, Martin had no in-depth follow-up conversations with either Coach Philbin or Coach Turner about his mental health issues. Martin did say that each of them occasionally asked how he was doing or how he was feeling in a manner that conveyed concern for his well-being.

Martin believed that taking Lexapro quickly produced positive results, helping him to think more clearly and improving his ability to cope with the comments from his teammates that he found offensive. On May 17, Martin wrote to his mother: “I’m not gonna be scared any more. This medicine is effective. Just had a ‘moment of clarity.’” When she asked him to explain, he answered: “Well I realized that I don’t like

superficial Miami people. And that I wanna be really good at football. And that I need to find a girlfriend.”

According to Martin, however, the pattern of verbal abuse proceeded unabated over the summer of 2013, and his mental health does not appear to have improved permanently. On May 28, he sent this text to his mother: “I just don’t really see the point in things. It’s a major accomplishment for me if I brush my teeth or eat more than 1 meal in a day on off days. It’s not that I’m sad, just unmotivated.” And on June 9, he wrote to her: “I just feel trapped. I feel like I have no agency in my life. Too many expectations. I’m losing my will to compete, which is the scariest thing an athlete can ever say.”

D. The 2013 Season

1. Insulting Language Directed at Martin

Martin said that he had hoped that his teammates would stop insulting him during his second year, as he was no longer a rookie. But, as the 2013 season began, he contends, the vulgar and demeaning comments showed no sign of letting up, and in fact got worse in three respects.

First, Martin said that in addition to graphic sexual comments about his sister, he was now sometimes made to hear similar insults about his mother. Second, according to Martin, Incognito at times began telling Martin “you’re my bitch,” and other players began to refer to Martin as “Richie’s bitch” or the “O-line’s bitch.” Martin reported that during one practice, he got into an altercation with a defensive player and that Incognito rushed in to defend him, but later on the field and in the locker room (in front of other players), Incognito proclaimed that he had intervened because, in his words to Martin, “you’re my bitch.” Third, Martin related that one day when he showed up to

practice one day without showering, Incognito began calling him a “smelly,” “dirty” or “stinky” “Pakistani.” Martin said that Incognito’s teasing about body odor continued, even when he was wearing heavy deodorant, and that it bothered him significantly, particularly because it had a racial element.

Incognito interpreted the incident on the practice field in precisely the opposite way, citing it as an example of how he cared and looked out for Martin. Incognito did not deny calling Martin his “bitch” or a “stinky Pakistani,” but claimed, about such language generally, that this was good-natured fun that Martin understood and accepted as such.

2. The Continuation of the Friendship between Martin and Incognito

The text messages Martin and Incognito sent to each other in August, September and October 2013 indicate that Incognito and Martin continued to socialize as the season began, and continued often to address each other in a crude fashion. On at least a dozen occasions, they went to movies, dinners or bars together. In August 2013, Incognito began calling Martin his “road dog,” meaning a close friend who could be counted on to provide company at a moment’s notice, no matter what time of day or night, although on one occasion, when Martin rejected an invitation to go out, Incognito wrote to him: “PussyU are no longer my road dog.”

The text messages show that Martin repeatedly sought out Incognito’s company during the 2013 season. For example, after the Dolphins won their first three games, the following text messages were exchanged:

Martin: I got those same two chicks from [local strip club] who
wanna hang out

Martin: C'mon man we got tomorrow off... We're 3-0... Gotta celebrate

Martin: Don't pull a Jon Martin

Incognito: I'm laying on my couch I wanna get fadedSooooo tired

Incognito: HahahaWhere do u wanna go [another bar in Ft. Lauderdale]??

Martin: Yeah man why not. We gotta do something

Incognito: Ok. Let's do [that bar]

Incognito: Let's eeeeeeeeat

Martin: Ok. [Dolphins defensive player] doing sobe [South Beach]... Just saying

Incognito: Sobe is waaaay too much for me

Incognito: I'll step out for a drink or two. U young boys can stay out late. Not this old man p

Martin: Ok. I can do [that bar]

Martin: When u wanna go?

Incognito: Let's go now

...

Incognito: Waiting on a cabU there?

Incognito: How are those girls looking?

Martin: Not here yet but they're bad bro

Incognito: Yeeeesssss

Martin's relationship with Incognito became so close during 2013 that he told Incognito about some of his mental health issues, including at least one of his instances of suicidal thoughts. Incognito's recollection is that Martin linked his depression to poor performance in football and said he felt worthless after he had a bad game, referencing the 2012 season-ending game against the Patriots. Martin confirmed

that, when he mentioned depression to Incognito, he probably attributed it to the pressures of football. But Martin claimed that to the extent he focused on football, that was because he did not want to disclose to Incognito that he felt verbally abused by his teammates. Martin also suggested that he may have been drinking in a strip club when he confessed his mental health problems to Incognito.

Martin also told Will Yeatman, his close friend and his roommate during road trips, about his battle with depression and suicidal thoughts. Again, however, Martin did not tell Yeatman that he felt beaten down by vulgar or insulting comments from other players. To our knowledge, Martin told no other players other than Incognito and Yeatman that he had contemplated suicide.

We note that in the first instance we found it puzzling that Martin was able to confide in two of his coaches and two of his teammates, one of whom was his alleged primary tormentor, about his struggle with suicidal thoughts, but claimed he felt that he could not tell anyone affiliated with the Dolphins that his fellow offensive linemen were berating him with obscene taunts. Our consulting expert, however, explained that Martin's behavior is consistent with the behavior of victims of abusive treatment, who tend to be non-confrontational and non-aggressive. Dr. Berman also confirmed that Martin's placing the blame on himself rather than on his abusive teammates is consistent with how a person in a depressive state thinks and behaves. A depressed person typically is non-confrontational and often has a negative view of himself and his future that he blames on himself, not others. Given Dr. Berman's view and Martin's contemporaneous text messages to his parents, we credited Martin's account.

3. The Fine System and the Judas Concept

The NFL permits players to establish so-called “kangaroo courts” under certain conditions; for example, any money they collect must be put to a common team-oriented purpose, such as a post-season party. Around the beginning of the 2013 season, the Dolphins offensive linemen established such a system, and began to impose fines on each other for a variety of trivial offenses, such as farting, arriving late for meetings, failing to provide candy, having “stinky dreads” and wearing “ugly ass shoes.” Incognito and Pouncey, as the leaders on the line, imposed many of the fines, but other linemen also proposed penalties. The fine book was often maintained by Incognito, and the fines, which were tallied weekly, generally ranged from \$10 to \$500, though the amounts were flexible and at times negotiable. If not paid before the next game, the fines were doubled. The money was paid to Tyson Clabo, the “treasurer,” who told us that he had approximately \$35,000 in fine money in his locker. The plan was to use this money to fund the offensive line’s next post-season trip.

Sometimes, a fine would be levied on a lineman for acting like a “Judas,” meaning a traitor or “snitch.” For example, if Coach Turner, while watching game footage, criticized a lineman for missing an assignment, and that player pointed out that his teammate was actually at fault, that player might be labeled a “Judas,” which could result in a fine. Multiple offensive linemen were familiar with the “Judas” concept and told us that it had been referenced in discussions with Coach Turner. When we interviewed Turner, however, he denied knowing what the term “Judas” meant in the context of the Dolphins offensive line. He said, “I’ve never heard ‘Judas fine’ in my room,” and denied hearing any other references to “Judas” in the offensive line room. He also denied lecturing players on the meaning of the term. The evidence shows, however,

that Turner was aware of the “Judas” concept, and that he discussed its meaning with a number of linemen, even explaining how the biblical Judas had betrayed Jesus Christ and so became a “snitch.” Further, Coach Mosley informed us that it had been Turner who introduced the idea of the “Judas fine” to the offensive linemen.

Martin interpreted the “Judas fines” concept as confirming that “snitching” was contrary to the team ethic. He said that it discouraged him from complaining to anyone in the Dolphins organization about the conduct of his teammates.

Martin also complained to us that his teammates had forced him to pay an exorbitant fine, which he viewed as part of the abuse leveled against him. At the beginning of the 2013 season, Incognito and other linemen told Martin that he owed a \$10,000 fine for not going on the January 2013 offensive line Las Vegas trip. Martin understood that the \$10,000 supposedly reflected the amount that he would have spent on that trip; it did not represent expenses that had been incurred on Martin’s behalf because he was a no-show. Martin was repeatedly told that he had to pay this fine, and he eventually did, by check. Martin noted that this fine was completely out of proportion to the other fines imposed, which were typically in the hundreds of dollars; in his mind, this showed that the fine was levied with harassing intent.

Incognito and others said they were plainly joking when they told Martin to pay this fine, and that they never thought Martin would do so. Nevertheless, since Martin wrote the check, and appeared to be looking forward to the next group off-season trip (when the fine money would be spent), they accepted the payment (which was by far the highest fine paid). Martin said that he paid the money because he did not believe his teammates were kidding, and he thought he had no choice. Jerry told us, however, that

his teammates had also tried to fine him \$10,000 for refusing to join the Las Vegas trip, but that he responded “fuck no” and did not pay. No one pressed him further.

4. Performance of Martin and the Miami Offensive Line

During the first half of the 2013 season, when Martin was still with the team, the offensive line did not play well as a unit. They were leading the league in sacks given up and on pace to set a franchise record in that dubious statistic. The performance of Martin and other linemen was criticized in the press.

On October 6, the Dolphins lost 26-23 to the Baltimore Ravens. Martin acknowledged that he had a bad game that day and that he made critical errors at the end of the fourth quarter. Martin told us that he got extremely intoxicated that night, and missed a required morning weight lifting session the next day, resulting in a financial penalty from the Dolphins. When Martin was missing from the practice facility on the morning of October 7, Incognito instructed another lineman to go to Martin’s house and look for him, but they had the wrong address. When Martin eventually arrived at the Dolphins facility later that day, he was still inebriated. Incognito claimed this incident is evidence that Martin had a tendency to turn to substance abuse in reaction to poor on-field performance. Incognito also cited this incident as another example of a time when he showed concern for Martin.

On October 21, the Dolphins acquired veteran left tackle Bryant McKinnie from the Baltimore Ravens in a trade. Martin was moved to right tackle and Tyson Clabo, who had been starting in that position, was benched. According to Steve Ross, the acquisition of McKinnie was designed to upgrade the entire offensive line, and Martin’s reassignment was not a demotion, but a reflection of Clabo’s struggles. Martin said he

was privately “bummed” about the position switch, but stated publicly, as reported in an October 22, Sun Sentinel article:

You can approach this two different ways. You can go in the tank and be one of those guys [that] moans and is a cancer in the locker room. Or you can be a guy who goes out there and can be a professional, play as hard as I can. My mindset is I’m still going to try better and do whatever I can do [to] help the team win.

On Sunday, October 27, the Dolphins lost to the Patriots, 27-17. The offensive line once again played poorly, giving up six sacks for 47 yards lost, including a pivotal strip sack in the third quarter. Martin did not play well; according to Coach Turner’s game notes, he had one missed assignment and allowed one quarterback hit, though Martin did not give up any of the six sacks.

5. Martin Leaves the Dolphins

On Monday, October 28, Martin tweeted that he was going to approach the day with “EUTM,” an acronym for the phrase “Enthusiasm Unknown To Mankind,” which he had learned from Jim Harbaugh. But Martin told us that his internal mood did not match his public pronouncement. Several of his teammates reported that he seemed unusually quiet that day. Martin told us that early in the day as he entered a meeting room at the Dolphins facility, he heard a number of taunts, including “stinky Pakistani,” and he said to himself that he was “almost fed up.”

When Martin arrived in the cafeteria for dinner around 6 pm, most of the offensive linemen were already sitting together at a table. According to Martin, while he was waiting in line for food, Incognito called out to him from the table, saying that he did not want Martin to join the group, and that he should move his “stinky Pakistani ass” and sit by himself. Incognito acknowledged either making this statement or at least saying

something substantially similar. (Ironically, we were also told that around the time that Incognito loudly uttered this insult, someone at the table said Martin was Incognito's "little brother," and Incognito agreed.) According to Martin, a fellow team member who was standing near him in line said "get them off your back Jmart." Martin says this remark further emphasized to him that the offensive linemen were routinely demeaning him in front of his other teammates and that it was obvious that he was failing to stand up for himself. He promised himself that if they did one more thing, he would leave.

Moments later, at Incognito's urging, all of the linemen sitting at the table got up and walked away when Martin arrived. According to Incognito, this prank had been played on other linemen many times before, and Martin had previously participated and even "called the play" on Nate Garner a few weeks prior. Martin denied that he had ever been the instigator of such a prank.

For Martin, the cafeteria incident was the last straw. He slammed his tray of food on the floor, dashed to his locker to retrieve his car keys and left the Dolphins facility. He told us that after he drove away, he bought a large bottle of vodka (but reportedly did not drink any of it), went to see a movie and then bought a sandwich. During this time, he turned his phone off to avoid receiving calls and text messages from people who would be looking for him. After he turned on his phone, he decided to call a hospital and arrange to check himself in. Martin said that he wanted to get to a hospital so his parents would know he was in a safe place, and also because he believed that he might need medical attention because he suspected that he was acting irrationally.

Coach Philbin became worried upon learning that Martin had stormed out of the Dolphins facility. At Coach Philbin's instruction, Kaleb Thornhill, the Director of

Player Engagement, called Martin's father to tell him that Martin had disappeared.

Thornhill and Stu Weinstein, the head of security, were dispatched to Martin's house, where they first attempted to determine whether he was home and then waited for hours to see whether he would turn up.

During a walk-through drill that night, Coach Philbin paced the sidelines, asking for updates on Martin. Addressing the team at the end of practice, Coach Philbin expressed serious concern for Martin and pleaded for any player who heard from Martin to contact someone from the Dolphins organization immediately.

At approximately 9:30 pm that night, Martin sent text messages to his mother, Coaches Philbin and Turner, and the Assistant Trainer, telling them he was alright but in the hospital. Coach Philbin and Thornhill visited Martin in the hospital later that night. Coach Philbin expressed concern for Martin during the visit, but there was no discussion of why Martin had left the team, although Coach Philbin assumed Martin was suffering from a mental health condition. After leaving the hospital, Coach Philbin phoned Martin's father and discussed his visit with Martin.

Martin's mother caught a redeye flight from Los Angeles that night and arrived in Miami early in the morning on Tuesday, October 29. She was greeted by Thornhill, who assisted her over the next few days. Also that morning, Martin was transferred by ambulance to Aventura Hospital, because Memorial Hospital West was not equipped to provide necessary psychiatric services. He spent the next two days at Aventura Hospital.

Martin's mother told us that Thornhill volunteered to her during her visit that Incognito tended to "needle people" and sometimes went "too far," and that

Incognito had previously berated him (Thornhill), accusing him of doing little for the team and questioning whether he deserved his salary. Martin's mother said that Thornhill told her that team officials had intervened at his request to ask Incognito to curb these insults. Incognito acknowledged that he had questioned Thornhill's performance, but claimed that Thornhill was his friend and that the remarks were made in a joking fashion. Thornhill gave a similar account, also claiming that Incognito was his friend, and he denied telling Martin's mother that Incognito went too far or that Incognito had harassed him. Thornhill admitted, however, that he may have said to Martin's mother that the offensive line as a group tended to needle each other and that they collectively may have gone "too far."

6. Martin's Communications with Dolphins Personnel After Leaving the Team

While at the Memorial West and Aventura hospitals, Martin received text messages from Dolphins personnel, including teammates and coaches. Most of them asked how he was feeling and expressed support. As discussed above, Garner told Martin, "I have been dealing with this shit for 6 years," and the Assistant Trainer wrote "They are relentless sometime.... Some day I wanna do exactly what you did today." A defensive player, Player C, had the following exchange with Martin:

Player C: You good bro?

Martin: Yeah bro. Thanks

Player C: Fuck those guys tho, you can kick it with the dline lol

Player C: Ritchie just suffers from lol dick syndrome so he tries to bring people down

Martin: Lol preciate it

Martin: There's more to it but thanks man sorry to worry all you guys

Player C: Fa sho but just prepare for hell

Martin: Yeah I know lol

Coach Turner reached out to Martin, asking if he was alright and noting that everyone was concerned. On October 29 he sent a text message to Martin that stated: “Hope you are ok man. If you need anything let me know.” Martin responded two days later: “Ok thanks coach. That means a lot. Sorry to be so dramatic, wasn’t exactly thinking straight.”

On October 29, Martin exchanged text messages with Jeff Ireland:

Ireland: Jonathan. Glad your safe. You have a family of brothers that care very much for you. They meant not harm in there prank. We are all here for you. J Ireland

Martin: Mr. Ireland-- I appreciate the text. Just spoke with Coach Philbin. I apologize for making a scene & making people worried.

Ireland: We’ll work thru all this. Don’t u worry.

The only person Martin ignored completely during the first few days after he left the team was Incognito. He received, but did not respond to, the following seven text messages:

October 28, 2013:

(5:16 pm) Incognito: Yooooo

(5:17 pm) Incognito: What’s up?

(5:25 pm) Incognito: Call me

(7:07 pm) Incognito: Yooo U alright Text me back

(9:09 pm) Incognito: U good dude?

October 29, 2013:

(10:23 am) Incognito: What's up dude Glad to hear Ur ok I'm here if u ever need to talk. I've been through enough shit myself to understand.

(5:52 pm) Incognito: I miss Ur stinky armpits

7. Incognito's Entries in the Fine Book

Incognito made a number of notations in the offensive line's fine book following Martin's departure. He recorded a \$200 fine against himself for "breaking Jmart," awarded Nate Garner a \$250 bonus for "not cracking first," and wrote down the following fines for Martin:

100 pussy
100 pussy
100 pussy
100 pussy
1,000,000.00 pussy

When interviewed, Incognito acknowledged that these fines were levied in response to Martin's decision to leave the team but claimed that the entire fine book was no more than good-natured joking among the offensive linemen. At first, he claimed that he did not know why he had been fined for "breaking Jmart." Upon being told that the notations appeared to be in his own handwriting, he did not deny that "breaking" another player meant causing that player to have an emotional reaction as a result of verbal taunting. He also said that the running bet on the line was that Garner would break first from the verbal taunts, which is why Garner got a \$250 bonus for "not cracking first," and that Martin was fined for being a "pussy" because no one just walks out of practice.

8. Ireland's Communications with Zuckerman

Ireland had several telephone conversations with Martin's agent, Kenny Zuckerman, in the wake of the cafeteria incident. These conversations were explored

during this investigation in part because of media reports that Ireland allegedly had told Zuckerman that instead of leaving, Martin should have punched Incognito. The accounts of Ireland and Zuckerman on this point differ sharply. Each wrote notes, apparently after the news stories about their conversations were published, that corroborate their respective accounts of the calls.

Ireland told us that in the course of discussing the events surrounding Martin's departure, he had casually remarked that if a schoolyard bully constantly takes one's milk money, perhaps "fisticuffs" would be in order. Ireland claimed that he was not advocating actual violence, and that his comment has been taken out of context and distorted by the media. In contrast, Zuckerman said that he interpreted Ireland as being quite serious in suggesting that had Martin simply attempted to punch out Incognito or otherwise engaged him in physical violence, Incognito would have understood Martin's objections and would have stopped the behavior about which Martin was complaining. Zuckerman strongly disagreed with the suggestion that Ireland had merely offered a hypothetical example of how a schoolyard bully should be confronted.

Ultimately, these issues are not central to this Report, and thus we do not make a credibility finding to resolve which version of the telephone calls should be regarded as more accurate.

9. Martin's Communications with His Teammates

Martin was released from Aventura Hospital on Thursday, October 31, and he returned to California later that day. That night, he posted on his Facebook page (which is not public) the following statement, meant to dissuade his friends from thinking he had emotional problems: "Happy Halloween! Don't believe everything you read. Opinions are like assholes, everyone has one."

The Dolphins played the Cincinnati Bengals on the night of October 31 and achieved a close, hard-fought victory, 22-20. The next day, Martin sent a text message to the offensive line group that stated:

Wassup. Just wanted to congratulate you guys on the win.
Seems like the worlds gone crazy lol but I'm thinking about
you guys & wish u luck cuz I probably won't be around for
a little while

Garner and Yeatman privately replied to say "thanks" and to wish Martin well, and the team's quarterback, Ryan Tannehill, engaged in a similar text exchange with Martin. Around the same time, Incognito, having not received a text message from Martin since he left the team, sent him another message, and Martin finally responded. They had the following exchange:

Incognito: How u doing buddy? Feeling better?? I miss us

Martin: Wassup man? The worlds gone crazy lol I'm good tho
congrats on the win

Incognito: Thanks dude It's unbelievable all the attention this is
getting. All that's important is that you feel better and
know we miss u dude

Martin: Yeah I'm good man. It's insane bro but just know I don't
blame you guys at all it's just the culture around football
and the locker room got to me a little.

Martin: Btw... Never check yourself into a mental hospital

Incognito: I hear ya It's a lot to take in I've checked myself in
before I had to threaten to beat everyone up for them to let
me out. Not fun

Martin: Yeah bro it was the worst. I almost snapped and started
breaking shit

Incognito: Hahahaha That's exactly what I was feeling

Incognito: The brain is a tricky thing My brain has been to far out
places and back

Martin: Yeah man. How you feeling? Heard you got hurt

Incognito: I'm good Got a crazy stinger Lost feeling in my arm
MRI came back clean tho I'll be ok

Martin: Damn. Good to hear bro

Incognito: Have u beat GTA yet?

Martin: Nah I'm back in LA so wont get a chance to for a little
while. Hbu?

Incognito: I'm getting close About to nerd the fuck out this
weekend

Incognito: Good to hear from u bro If u need anything hit me up.
I'm here for you my dude

Martin: Fsho bro. Take it easy

Approximately an hour after this text message exchange between Martin and Incognito came to an end, NFL.com's Jeff Darlington reported, via Twitter: "Martin has been in touch with teammates, who have expressed concern about his wellbeing. Martin hopes to eventually return to the team." Two hours later, Darlington tweeted: "Earlier today, Richie Incognito heard back from Jonathan Martin after he'd reached out to him to see how he was doing" Darlington went on to report that the two players had recently exchanged 19 text messages, and posted Martin's text message to Incognito in which Martin had written, among other things, "I don't blame you guys at all." Thirty minutes later, again on Twitter, Darlington stated that he was "refraining from publishing the entirety of exchange," but noted that "it is congenial in tone, including Martin's concern about Incognito's injury."

Incognito acknowledged during our investigation that he had provided Martin's text messages to Darlington. He said he did so because he had learned that his name was becoming attached to a media narrative about bullying that he believed painted

him in an unfair and untrue light and that he wanted to “get out in front” of such a story before it was published. In Martin’s mind, however, these events show that Incognito manipulated him. When asked, Incognito strongly disagreed that he had contacted Martin as part of a premeditated effort to bait him into making statements that Incognito could release to the media as part of an effort to exonerate himself.

Within hours of Incognito reaching out to Martin, media outlets began running stories identifying him as the person responsible for Martin’s departure as a result of alleged bullying. Incognito quickly forwarded such a news clip to Martin and asked “What’s up with this?” to which Martin responded “I got nothing to do with it man I haven’t said anything to anyone.”

In addition, also on November 1, hours after Incognito wrote, “I’m here for you my dude” to Martin, Incognito exchanged the following text messages with Pouncey:

Incognito: Fuck Jmart That faggot is never [allowed] back

Pouncey: Bro I said the same thing I can’t even look at him the same he’s a pussy

Incognito: My agent just asked if we held mandatory strip club meetings Jmart is fucking ratting on everyone

Pouncey: Lol wow are you serious he is a fuck boy

Pouncey: He’s not welcome back bro I can’t be around that fucking guy

Incognito: Fuck that guy if Ur not with [u]s Ur against us

Pouncey: No question bro he’s a coward for snitching

Incognito: Snitches get stitches Blood in blood out Fucking guy

Pouncey: He’s dead to me

Over the next couple of days, Incognito sent the following text messages to Martin:

Incognito: I need you buddy I'm getting killed in the media.

Incognito: Bro can we talk? The dolphins are talking about releasing me

Martin did not respond to these text messages, and we understand that he has not had any further communication with Incognito.

10. Incognito's Attempted Destruction of the Fine Book

On November 3, Incognito wrote nearly identical text messages to both Pouncey and Garner: "They're going to suspend me Please destroy the fine book first thing in the morning." When asked about these text messages, Incognito claimed that he believed it would be "misunderstood" if it was reviewed outside of the offensive line. Neither player destroyed the fine book, and it was recovered weeks later.

11. Turner's Pressuring of Martin to Defend Incognito

On November 2, after media stories appeared alleging that Martin had been bullied by Incognito, Coach Turner began sending Martin text messages that urged him to defend Incognito in a public statement. Martin responded to one, but then stopped communicating with Turner, who continued to pressure him to "DO THE RIGHT THING" for several days afterward, as shown below:

November 2, 2013:

Turner: Richie incognito is getting hammered on national TV.
This is not right. You could put an end to all the rumors
with a simple statement. DO THE RIGHT THING.
NOW.

Martin: Coach. I want to put out a statement. Believe me I do.
This thing has become such a huge story somehow. But
I've been advised not to... And I'm not supposed to text

anyone either cuz last time I responded to a teammate (Richie) I was intentionally manipulated and the conversation was immediately forwarded to a reporter.

Turner: He is protecting himself. He has been beat up for 4 days.
Put an end to this. You are a grown man. Do the right thing

Turner: John I want the best for you and your health but make a statement and take the heat off Richie and the lockerroom.
This isn't right.

November 3, 2013:

Turner: I know you are a man of character. Where is it?

November 6, 2013:

Turner: It is never to late to do the right thing!

Turner sent these text messages to Martin knowing that Martin had hospitalized himself in connection with a mental health condition, and in the face of public reports indicating that Martin's emotional condition may have been a reaction to his teammates' bullying and abusive behavior.

12. The Dolphins' Response to Martin's Departure

In the November 1-3 time period, as the media continued to report that Martin had been harassed by his teammates, the Dolphins considered an appropriate response. Coach Philbin had a number of telephone conversations with Martin's father about a possible joint statement between the Martin family and the team, but those talks ended without agreement at the end of the week.

Coach Philbin questioned Incognito on Saturday, November 2 about the allegations of bullying that had surfaced in the press. Incognito told Coach Philbin that Martin was his friend and denied the allegations. Incognito also urged the Dolphins to issue a statement clearing him and raised the possibility of publicly disclosing Martin's

mental health issues. Coach Philbin asked Incognito not to pursue this approach, and he did not.

Around the same time, Coach Philbin also questioned Coach Turner, who assured him that the press reports of abusive treatment of Martin were unfounded, that there had been no bullying on the offensive line and that none of his players had been called “vulgar names.” Coach Philbin told us that he advised Turner that such conduct “better not be happening.”

On the morning of Sunday, November 3, the Dolphins issued the following statement:

The Miami Dolphins, including Coach Joe Philbin and Jonathan’s teammates, have been in communication with Jonathan and his family since his departure from the club and continue to be in contact. Our primary concern for Jonathan is his overall health and well-being. As an organization, we take any accusations of player misconduct seriously. The notion of bullying is based on speculation and has not been presented to us as a concern from Jonathan or anyone else internally. . . . We will continue to make Jonathan’s health and well-being a focus as we do with all of our players.

Shortly after this press release came out, one of Martin’s representatives sent the Dolphins a transcript of Incognito’s April 6 voicemail message in which Incognito had called Martin a “nigger,” and the team’s front office quickly became convinced that this new information was highly significant.

After learning about the April 6 voicemail, Coach Philbin and the Executive Vice President of Football Administration had a meeting with Incognito, during which Incognito admitted he had left the message in question and that he had made other vulgar or racially charged statements to Martin. Reportedly, Incognito also said that profane language was common in the locker room and that admonishments from

Coach Philbin “would not change the way we’re going to speak to one another.” By this time, Coach Philbin also had learned about the fine book and Martin’s payment of a hefty “fine” for having skipped the Las Vegas trip. Coach Philbin told us that he was incensed and that he told Incognito that such conduct was “absolutely ridiculous” and “not appropriate anywhere, anytime.”

The Dolphins then issued another press release, announcing that they had received notification from Martin’s representatives “about allegations of player misconduct” and had asked the league to conduct a review. At approximately 11:30 pm on the evening of November 3, Philbin informed Incognito of his indefinite suspension for “conduct detrimental to the team.” The Dolphins then issued their third press statement of the day to announce Incognito’s suspension and to affirm that the team “believe[d] in maintaining a culture of respect for one another.”

On Monday, November 4, ESPN published a transcript of Incognito’s April 6 voicemail message. The story instantly sparked national media coverage. The same day, in a press conference, Coach Philbin took responsibility for the atmosphere in the Dolphins workplace. He stated that he took allegations of harassment seriously and would not tolerate “any type of conduct and behavior that detracts from” players’ ability to “reach their full potential.”

Initially, Dolphins players did not comment publicly about Martin’s departure from the team, evidently because they had been instructed not to discuss the situation with the press. But on Wednesday, November 6, they began to speak to the media, and their statements were overwhelmingly supportive of Incognito. For example, ESPN reported that Mike Pouncey and Mike Wallace said they “respect[ed]” and

“love[d]” Incognito and wanted him back on the team, and Ryan Tannehill described Incognito as “the best teammate I could ask for.” Randy Starks told reporters that he was “trying to clear Richie’s name” because “[h]e’s getting a bad rap.” Other players appeared critical of Martin. For instance, Tyson Clabo said Martin should “stand up and be a man . . . I don’t know why he’s doing this, and the only person who knows why is Jonathan Martin.”

13. Owner Steve Ross Calls for Change

Dolphins owner Steve Ross took very seriously the issues raised by Martin’s departure. On November 11, he issued a statement in which he made clear that he “and the Miami Dolphin organization are committed to getting to the bottom of this issue and making any necessary changes to improve our organization.” Ross also explained that the Dolphins had begun an internal review of their policies and procedures, and had created an independent advisory group to review the team’s “organizational conduct policies and to make recommendations on areas for improvement.” Ross concluded his statement by declaring:

The NFL locker room is a special place, no doubt, but that does not mean that different rules of decency and respect should be in play. Winning championships is what we are all about, but we cannot do so if any of our family members are challenged from reaching their potential.

When we met with Ross, he reiterated his sincere commitment to seeing positive outcomes emerge from the events surrounding Martin’s departure from the team. He stated that the Dolphins “owned this problem” and would work to fix it, and that he intended to address issues of civility and racial taunting head-on, both within the Dolphins organization and in the community at large.

14. Status of Martin and Incognito

On November 30, Martin was placed on the Dolphins Non-Football Injury list with full pay, ending his 2013 season. Martin has stated that he enjoys playing football and wants to return to the NFL. He is under contract with the Dolphins through 2015.

On December 15, the Dolphins announced that Incognito would remain suspended for the rest of the season, with pay. The team, however, has refused to pay him what he says he is owed under his contract (approximately \$500,000) in connection with the first two weeks of his suspension. Incognito has filed a grievance in connection with that decision. He will be a free agent in March 2014.

Conclusion

As all must surely recognize, the NFL is not an ordinary workplace. Professional football is a rough, contact sport played by men of exceptional size, speed, strength and athleticism. But even the largest, strongest and fleetest person may be driven to despair by bullying, taunting and constant insults. We encourage the creation of new workplace conduct rules and guidelines that will help ensure that players respect each other as professionals and people.

Appendix A

Articles Considered Regarding Bullying

- Bowling, N. A. & Beehr, T. A. (2006). Workplace Harassment from the Victim's Perspective: A Theoretical Model and Meta-Analysis. *Journal of Applied Psychology*, Vol. 91, No. 5, 998-1012.
- Einarsen, S. (1999). The Nature and Causes of Bullying at Work. *International Journal of Manpower*, Vol. 20, No. 1/2, 16-27.
- Georgakopoulos, A., et al. (2011). Workplace Bullying: A Complex Problem in Contemporary Organizations. *Int'l Journal of Business and Social Science*, Vol. 2, No. 3.
- Hazelden Foundation. (2007). Olweus Bullying Prevention Program. Recognizing the Many Faces of Bullying. Retrieved from http://fea.njpsa.org/documents/bullying/01_recog_many_faces.pdf.
- Keashly, L. (2001). Interpersonal and Systemic Aspects of Emotional Abuse at Work: The Target's Perspective. *Violence and Victims*, Vol. 16, No. 3, 233-68.
- Keashly, L. & Jagatic, K. North American Perspectives on Hostile Behaviors and Bullying at Work, 41-71. *Bullying and Harassment in the Workplace*. Eds. Einarsen, S. et al. New York, N.Y.: Taylor & Francis, 2011.
- Nielsen, M. & Einarsen, S. (2012). Outcomes of Exposure to Workplace Bullying: A Meta-Analytic Review. *Work and Stress: An International Journal of Work, Health & Organisations*. Vol. 26, No. 4, 309-32.
- Rayner, C. & Keashly, L. Bullying at Work: A Perspective from Britain and North America, 271-96. *Counterproductive Work Behavior: Investigators of Actors and Targets*. Eds. Fox, S. & Spector, P. Washington, DC: American Psychological Association, 2004.
- Samnani, A.-K. & Singh, P. (2012). 20 Years of Workplace Bullying Research: A Review of the Antecedents and Consequences of Bullying in the Workplace. *Aggression and Violent Behavior*, Vol. 17, 581-89.

Appendix B

Dolphins Workplace Policies Considered

- **Presentations by Coach Philbin**

Coach Philbin gives presentations twice a year, at the start of the off-season training program in April and during training camp in July, during which he addresses professionalism and decorum. His PowerPoint materials stress that players and coaches ought to show respect for everyone with whom they come in contact—teammates and others both inside and outside the workplace. The 2013 training camp presentation included the names and phone numbers (provided on cards) of Dolphins employees to contact to report problems. Philbin also repeatedly reminded the players of the importance of treating others with respect throughout the season, and he lectured new players on this subject each year in June at a Rookie Symposium.

- **Personal Conduct Policy**

In 2012 and 2013, the Dolphins players were given a policy called the “Personal Conduct Policy,” which each player acknowledged in writing that he had received and understood. This policy, taken from the NFL handbooks, states:

All persons associated with the League are held to high standards and are expected to conduct themselves in a way that is responsible, promotes League values, and is lawful. Those who engage in conduct that endangers NFL employees or the public, or that is detrimental to the integrity of and public confidence in the NFL, will be subject to discipline, including fine and/or suspension.

The “Personal Conduct Policy” prohibits, among other conduct, serious incidents of violent or threatening behavior among employees, conduct that is dangerous

to the safety and well-being of others, and conduct that undermines the reputation of the NFL, its clubs or players. The policy requires that any violation be reported to the club or the NFL, and provides names, titles and phone numbers for reporting or consulting about such incidents. The policy also states that failure to report will be considered conduct detrimental to the league.

- Workplace Harassment and Discrimination Policy

In 2013, for the first time, the Dolphins issued a short “Workplace Harassment and Discrimination Policy” to players; again, each player acknowledged that he had received and understood it. This policy, also taken from the NFL handbook, states:

It is the policy of the National Football League to provide equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, sex, national origin, age, disability, sexual orientation or other status protected by applicable federal, state or local law.

It then specifically states:

Harassment can include, but is not limited to: unwelcome contact; jokes, comments and antics; generalizations and put-downs; pornographic or suggestive literature and language. In addition, harassment and discrimination are not limited to the workplace: they example [sic], through calls, texts or emails, on a plane or team bus; at a team event; or at the team hotel.

The policy encourages reporting discrimination or harassment to the NFLPA, a coach, HR or NFL Security.

- Miami Dolphins Club Discipline Schedule

The 2013 Miami Dolphins Club Discipline Schedule prohibits players, under Sections 3(a), (ii) and (vii), from engaging in conduct that reflects negatively on

the club or constitutes inappropriate behavior toward any individual. Such conduct is considered conduct detrimental to the club and may be punished with fines.

- Anti-discrimination and Workplace Conduct Posters

At the Dolphins training facility, two relevant anti-discrimination and workplace conduct posters are posted on the walls outside the locker rooms. One prohibits discrimination on the basis of sexual orientation and also mentions that all players have the “right to work in a positive environment that is free from any and all forms of harassment, intimidation and discrimination.” The other is a re-publication of the “Personal Conduct Policy.”

EXHIBIT B



AT&T Services, Inc.
National Compliance Center
11760 US Highway One
Suite 600
North Palm Beach, FL 33408

*Sent only by email to authorized agent Stephen L. Dubin
sldubin@yeedubin.com*

Thomas E. Brady
[REDACTED]
[REDACTED]

Re: Your AT&T Wireless Account for [REDACTED]

Dear Mr. Brady:

You have asked us two sets of questions about your AT&T wireless account for telephone number [REDACTED]:

1. "Is it possible for AT&T to retrieve the actual contents of any of my incoming or outgoing text messages from September 1, 2014 through March 15, 2015? If not, can you provide a brief explanation of your policy and protocol?"
2. "Do the actual contents of any of my incoming or outgoing text messages ever get saved on your network, even if just for a day? If not, can you provide a brief explanation of your policy and protocol?"

Below is AT&T's response. Although your account records would reflect the numbers to which you sent text messages and the numbers from which you received text messages for the time periods in question, AT&T cannot retrieve the actual contents of any of your incoming or outgoing text messages from September 1, 2014 through March 15, 2015.

This is because AT&T does not retain the content of text messages once those messages are delivered to the recipient. If AT&T is not able to deliver a text message within 72 hours, it is deleted. There are two exceptions. First, a wireless customer may subscribe to AT&T Messages, which permits customers to store their text messages in AT&T's cloud-storage system. We store those messages until deleted by the customer or for 90 days, whichever comes first. But you did not subscribe to AT&T Messages. Second, AT&T caches text-message content to detect and eliminate spam and other malicious activity for a 48-hour rolling period. The cache system does not enable retrieval and reporting on an individual subscriber basis. Messages marked as potentially malicious, including spam, may be retained for longer periods of time depending on the analysis. AT&T also retains SMS sent by customers to AT&T's spam-reporting short code to identify and mitigate future misuse of our network.



Finally, AT&T does not have access to text messages that are stored on wireless devices.

Sincerely,

A handwritten signature in blue ink that reads "Mary B. Anderson". The signature is fluid and cursive, with a long horizontal line extending from the end.

Mary B. Anderson
Executive Director

EXHIBIT C



NATIONAL FOOTBALL LEAGUE

ROGER GOODELL
Commissioner

June 22, 2015

ARTICLE 46 APPEAL OF TOM BRADY

Re: Decision on Hearing Witnesses and Discovery

By letter dated June 19, 2015, the NFLPA moved for an order compelling the Management Council to produce certain witnesses and documents in connection with the hearing in this matter. Also by letter dated June 19, 2015, the Management Council submitted its position on most of the issues raised in the NFLPA's letter. After carefully reviewing all of the submissions, I set forth below my decisions with respect to the contested hearing witnesses and the requested discovery.

I. Hearing witnesses

Because Article 46 of our Collective Bargaining Agreement does not address the permitted scope of witness testimony at appeals hearings, it is within the reasonable discretion of the hearing officer to determine the scope of the presentations and, where appropriate, to compel the testimony of any witnesses whose testimony is necessary for the hearing to be fair.

After the parties met and conferred about proposed witnesses, there remain disputes about four witnesses whose testimony the NFLPA has moved to compel. I resolve those disputes as set forth below.

Roger Goodell. As stated in my decision on the NFLPA's Motion to Recuse, I do not have any first-hand knowledge of the events at issue here. Nor did I play a role in the investigation that led to Mr. Brady's discipline or in any "preliminary findings" against the Patriots concerning an apparent violation of League rules.

The principal basis that the NFLPA advances for requiring my testimony -- an asserted delegation of my disciplinary authority to Mr. Vincent -- is based on a mistaken premise: As made clear in my June 2, 2015 ruling on the NFLPA's Motion to Recuse, I did not delegate my disciplinary authority to Mr. Vincent. Instead, I concurred in his recommendation and authorized him to communicate to Mr. Brady the discipline imposed under my authority as Commissioner. This procedure has been employed in numerous disciplinary proceedings over the past two decades and has never before been asserted as a basis for compelling the Commissioner or anyone else to testify in an Article 46 disciplinary proceeding.

For these and other reasons stated in my June 2, 2015 Decision, my testimony is not necessary or appropriate for a full and fair hearing. Accordingly, the NFLPA's motion to compel my testimony is denied.

Jeff Pash. Jeff Pash, the NFL's general counsel, does not have any first-hand knowledge of the events at issue here. Nor did he play a substantive role in the investigation that led to Mr. Brady's discipline; his role was limited to facilitating access by Mr. Wells to witnesses and documents.

Before the investigation got underway, there was consideration of Mr. Pash's playing a co-lead role with Mr. Wells in the investigation; that consideration was reflected in a public statement issued by the League. But as the Wells Report itself makes clear, Mr. Pash did not play any such role; the Wells Report was "prepared entirely by the Paul Weiss investigative team and presents the independent opinions of Mr. Wells and his colleagues."

Thus, even without regard to privilege issues, Mr. Pash's testimony is not necessary or appropriate for a full and fair hearing. The NFLPA's motion to compel Mr. Pash's testimony is therefore denied.

Troy Vincent. The NFLPA seeks an order compelling testimony from Mr. Vincent in two subject matter areas. One is Mr. Vincent's "involvement in the game-day events during the AFC Championship Game." The Management Council opposes an order compelling such testimony on several grounds, including its argument that Mr. Vincent's testimony on that subject would be cumulative of, and less direct than, the testimony from other game-day witnesses that it has agreed to make available. Because Mr. Vincent does have first-hand knowledge of some events that occurred at the AFC Championship game, I grant the NFLPA's motion to compel Mr. Vincent to testify on that subject.

To the extent that the NFLPA seeks an order compelling testimony from Mr. Vincent regarding a purported delegation of my Article 46 authority, its motion is denied. As stated above and in my June 2, 2015 Decision, I did not delegate my disciplinary authority to Mr. Vincent; I concurred in his recommendation and authorized him to communicate to Mr. Brady the discipline imposed under my authority as Commissioner.

Theodore Wells. As the Management Council observes in its letter, Mr. Wells is not a witness with first-hand knowledge of the events at issue. Nonetheless, he supervised the investigation and preparation of the Investigative Report that serves as the basis for Mr. Brady's discipline. His testimony regarding the substance and conclusions of his report is therefore appropriate in the context of a full and fair hearing. Accordingly, while privilege or relevance objections may be raised with respect to specific questions that he may be asked, the NFLPA's motion to compel his testimony on the substance and conclusions of his report is granted.

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Through the course of the hearing, should the parties present evidence showing that the testimony of a witness identified above (or, in Mr. Vincent's case, testimony in additional areas) is necessary for a full and fair hearing, I will revisit the NFLPA's motion to compel his testimony. In particular, I note that Mr. Wells may be asked whether Mr. Pash played a substantive role in the investigation; if the answer is in the affirmative, I will revisit that ruling with respect to Mr. Pash's testimony.

In the meantime, counsel for the NFLPA may allocate to other witnesses the 45 minutes that, in their separate letter of June 19, 2015, they had estimated would be required for questioning of Mr. Pash and of me.

* * *

The NFLPA's motion to compel also seeks an order directing that all witnesses testify under oath. The Management Council apparently took the position in the meet-and-confer process that it would object to witnesses being called to testify under oath, including in particular Mr. Wells.

I would expect that statements or testimony from any potential witness identified in this proceeding would not vary based upon whether the witness had or had not sworn an oath to tell the truth. Nonetheless, if either counsel prefers that a witness testify under oath, the witness shall do so. The NFLPA's motion as to this issue is granted.

II. Discovery

The NFLPA seeks an order compelling the production of interview notes and memoranda generated by Paul, Weiss attorneys in the course of their investigation. The Management Council opposes that motion, pointing out that it has provided the NFLPA with not only the Wells report but also the extensive collection of documents generated by the NFL and considered by Paul, Weiss in preparing the report.

On this issue, my starting point is Article 46 of our Collective Bargaining Agreement. As Judge Jones held in ruling on discovery in the Ray Rice proceeding:

"The bargained-for procedures include "discovery" limited to the production of all documents that will be relied upon at the hearing at least three days prior to said hearing. NFL-NFLPA CBA, Art. 46 § 2(f)(ii). 'Arbitrators are bound by the language of the contract, but equally important is that they are restricted by what the language of the contract does not say.' *Carrollton Bd. of Educ.*, 09-2 Lab. Arb. Awards (CCH) P 4632, at 8 (2009) (Allen, Arb.). Here, the collective bargaining agreement provides for tightly circumscribed discovery and does not contemplate the production of any other documents in an Article 46 proceeding other than under those terms."

The provision to which Judge Jones referred, Article 46, Sec. 2 (f)(ii), provides:

ROGER GOODELL
Commissioner

“Discovery. In appeals under Section 1(a), the parties shall exchange copies of any exhibits upon which they intend to rely no later than three (3) calendar days prior to the hearing. Failure to timely provide any intended exhibit shall preclude its introduction at the hearing.”

In interpreting the parties’ intention under Article 46 of the CBA, it is important to me that the parties agreed to permit much more extensive discovery in other kinds of proceedings under the CBA. For example, Article 15, Section 3 provides that in any dispute over which the System Arbitrator has authority, “the System Arbitrator shall grant reasonable and expedited discovery upon the application of any party where, and to the extent, he determines it is reasonable to do so.” This demonstrates that where the parties intended to allow traditional, court-like discovery, they knew how to do so, and it reinforces the significance of the fact that there is no such provision for Article 46 disciplinary proceedings before the Commissioner.

Furthermore, the parties’ agreement to limit discovery is consistent with the Article 46 design, which anticipates a reasonably efficient, expedited appeal proceeding conducted before a Commissioner who may be (and in this case is) a business executive rather than a lawyer.

As Judge Jones held, “the collective bargaining agreement provides for tightly circumscribed discovery and does not contemplate the production of any other documents in an Article 46 proceeding other than under those terms.” In short, on the basis of my interpretation of the Collective Bargaining Agreement, I deny the NFLPA’s motion for discovery.

There are other independent grounds for my decision to deny the NFLPA’s motion. *First*, I did not review any of Paul, Weiss’ internal interview notes or any other documents generated by Paul, Weiss other than their final report. The Paul, Weiss interview notes played no role in the disciplinary decisions; the Wells Report was the basis for those decisions. The Management Council has produced to the NFLPA that report, which contains a detailed accounting of witness comments, and Mr. Wells will be available to testify about the substance and conclusions of the report.

In addition, I understand that the Management Council produced all of the NFL documents considered by the investigators in preparing their report, including notes of interviews conducted by in-house NFL investigators prior to the time that the Paul, Weiss investigation began.

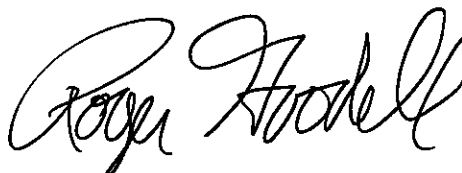
Accordingly, there can be no reasonable dispute that the NFLPA and Mr. Brady know, in considerable detail, the facts concerning the allegations on which the discipline was based and that they can properly prepare a response and participate fully in the hearing. Thus, even if discovery of the internal Paul, Weiss work product were permitted by the CBA, it would not be necessary for a full and fair hearing.

Second, the memoranda and interview notes generated by Paul, Weiss are not “ordinary course of business” documents. They are attorney work product of a kind that is ordinarily protected from discovery. That is especially true in circumstances, such as those presented here, where based on the NFLPA’s recent court challenges to discipline imposed on players, litigation challenging any discipline imposed could reasonably be anticipated.

Third, with respect specifically to notes of the interview of Mr. Brady himself (and perhaps others), I understand that NFLPA counsel were present for the interview itself, undermining any basis for seeking the Paul, Weiss work product.

Finally, the NFLPA has not identified any material factual dispute that Paul, Weiss’ internal work product would help to resolve.

For each of these independent reasons, the NFLPA’s motion to compel discovery of Paul, Weiss internal memoranda and witness interview notes is denied.

A handwritten signature in black ink, appearing to read "Roger Goodell", with a stylized, cursive script.

ROGER GOODELL